

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

Wednesday

January 29, 2014

+ + + + +

The Regular Public Hearing  
convened in the Jerrily R. Kress Memorial  
Hearing Room, Room 220 South, 441 4<sup>th</sup>  
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 MEMBERS PRESENT:

ROBERT MILLER, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
TRACEY W. ROSE, Sr. Zoning Specialist  
JOHN NYARKU, Zoning Specialist  
STEPHEN VARGA, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK

ARTHUR JACKSON

The transcript constitutes the  
minutes from the Public Hearing held on  
January 29, 2014.

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

2 (9:47 a.m.)

3 CHAIRPERSON JORDAN: Good  
4 morning. Would the meeting at the Board of  
5 Zoning Adjustment and the hearings of the  
6 Board of Zoning Adjustment please come to  
7 order?

8 We are located at the Jerrily R.  
9 Kress Memorial Hearing Room, Room 220 South,  
10 441 Fourth Street, N.W., and we're here  
11 today for the meetings and hearings to be  
12 held the Board of Zoning Adjustment.

13 My name is Lloyd Jordan,  
14 Chairperson. To my left is Robert Miller, a  
15 member of the Zoning Commission. To my  
16 right is Vice Chair S. Kathryn Alan.

17 Please be advised that these  
18 proceedings are being recorded by a court  
19 reporter, and also being webcast live.  
20 Therefore, I ask that you refrain from any  
21 disruptive noises here in the room. It  
22 would be a good time to make sure that we  
23 have our telephones silenced.

24 If you're planning to give any  
25 testimony or a statement to the Board today,

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1 I'm going to need you to do two things. The  
2 first is, I'm going to give you to complete  
3 two witness cards per person -- that's two  
4 witness cards per person -- and give them to  
5 the court reporter sitting to my right prior  
6 to providing any statement of testimony.

7 The second thing I'm going to  
8 need you to do is to stand at this time and  
9 take the oath or affirmation, which was  
10 given by the Board Secretary, Mr. Moy. So,  
11 if you're going to provide any statement of  
12 testimony, please stand and take oath.

13 MR. MOY: Good morning.

14 Do you solemnly swear or affirm  
15 that the testimony you're about to present  
16 in this proceeding is the truth, the whole  
17 truth, and nothing but the truth?

18 (Witnesses sworn.)

19 MR. MOY: Ladies and Gentleman,  
20 you may consider yourselves under oath.

21 CHAIRPERSON JORDAN: Thank you.

22 Before we get into our decision  
23 case, I'm going to ask that we have the  
24 representative of the Applicant in 18-651,  
25 as well as a representative of each party

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1 seeking party status in 18-651, to come take  
2 a seat at the table. One representative  
3 from each group is seeking party status.

4 I have a Janet Schmidt, for the  
5 opposition, for party status, an Isabel  
6 Sheila and John Holly.

7 We have a Withdrawal of Party  
8 Status Request from Brian Stansbury.

9 I think that's the three.

10 Would you please make sure your  
11 microphones are turned on? There should be  
12 a bright green glow.

13 Starting to my left, would you  
14 introduce yourselves?

15 MR. FITZGERALD: John FitzGerald.

16 MR. BROWN: Patrick Brown from  
17 Greenstein DeLorme & Luchs, P.C., Mr.  
18 FitzGerald's counsel.

19 CHAIRPERSON JORDAN: Okay.

20 MR. EISENBERG: Elliot Eisenberg,  
21 neighbor.

22 CHAIRPERSON JORDAN: Mr.  
23 Eisenberg, you're in support. You submitted  
24 a party status which was in support of the  
25 application, which we will treat as the

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1 opportunity to be supportive, but not as a  
2 party.

3 MR. EISENBERG: Oh, I see. So --

4 CHAIRPERSON JORDAN: Yeah.

5 MR. EISENBERG: I, I  
6 misunderstood.

7 CHAIRPERSON JORDAN: Oh, that's  
8 Okay. Yeah, you can go back, but thank you.  
9 It's better safe than sorry.

10 I think there were three party  
11 status requests.

12 Would the people who made a  
13 request, Janet Schmidt, Isabel Sheila, Don  
14 Holly, Brian -- no; Brian Samberg is -- so  
15 there's just two, okay.

16 All right, please.

17 MR. RUNYAN: I'm a neighbor, I  
18 just (off mic).

19 CHAIRPERSON JORDAN: If you can  
20 pair with a witness, absolutely. At the  
21 point where we ask the people for people to  
22 make a statement in opposition, then that  
23 would be fine.

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1                   Okay, so may I have any of those  
2   people who have filed for party status, here  
3   or not here?

4                   Yes; your name?

5                   MR. HOLLIS:   Hollis, John Hollis.

6                   CHAIRPERSON JORDAN:   We've called  
7   two or three times.   We really need you to -  
8   - all right.

9                   Make sure your microphones are  
10   turned on, please -- the bright green glow -  
11   - and would you identify yourselves?

12                   Make sure microphones are turned  
13   on.

14                   No, make sure the microphones are  
15   turned on.

16                   Okay.

17                   MS.   SCHMIDT:       Janet   Schmidt,  
18   owner of 14 Fourth Street, Northeast.

19                   CHAIRPERSON JORDAN:   Okay.

20                   And you are, sir?

21                   MR.   HOLLIS:       John   Hollis   and  
22   Sheila   Hollis,   owners   of   325   and   327   A  
23   Street, Northeast.

24                   CHAIRPERSON       JORDAN:           Okay.  
25   Hollis?

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1 MR. HOLLIS: Yes, sir.

2 CHAIRPERSON JORDAN: And you're  
3 Ms. Schmidt.

4 MS. SCHMIDT: Yes, I am.

5 CHAIRPERSON JORDAN: Is there an  
6 Isabel Sheila?

7 MR. HOLLIS: That's my wife.  
8 She's co-owner with me of the property.

9 CHAIRPERSON JORDAN: Okay. All  
10 right.

11 Mr. Brown, as you know our  
12 procedure, we will more than likely provide  
13 party status to these neighbors that have a  
14 very vested interest in this particular  
15 relief being sought.

16 What I'm going to ask the people  
17 in party status to do is actually to go out  
18 and have conversations. There are two  
19 conversations I need you to have. One,  
20 we're going to consolidate the two party  
21 status requests as one.

22 MR. HOLLIS: Right.

23 CHAIRPERSON JORDAN: And only one  
24 of you will have the opportunity to talk and  
25 submit.

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1 I guess Mr. Hollis is indicating  
2 that Ms. Schmidt is going to be the lead on  
3 that.

4 MR. HOLLIS: Yes.

5 CHAIRPERSON JORDAN:  
6 Collectively, along with the Applicant and  
7 the Applicant's counsel, I want you to go  
8 out and talk about whether any matter can be  
9 resolved in this matter prior to us calling  
10 this case for hearing.

11 I think it's going to be a short  
12 time frame, even though this is going to be  
13 up for a hearing, so please have a serious  
14 discussion. You may have had discussion  
15 before, but I still --

16 MR. BROWN: We have.

17 CHAIRPERSON JORDAN: -- I still  
18 require you to have a discussion today and  
19 see if we can move center.

20 We've had people who've had  
21 several months of discussion and come to  
22 this table, and they have not had it  
23 resolved. But, at this point, they go out  
24 in the hall, and they've found a way to

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1       resolve it.   So I'm going to ask you to do  
2       that, and we will call your case.

3               And keep near because we should  
4       probably be there pretty soon.

5               MR. BROWN:   Okay.   Thank you.

6               MS.    SCHMIDT:       Thank    you,  
7       Chairman.

8               CHAIRPERSON JORDAN:   Mr. Moy, we  
9       can do our decision case first.

10              MR. MOY:   Oh, you want me to do  
11      it now.

12              MR. MOY:   Should I, should I go  
13      on with my --

14              PRELIMINARY BOARD MATTERS

15              MR.    MOY:       Good morning, Mr.  
16      Chairman and members of the Board.   Thank  
17      you.

18              There's a number of preliminary  
19      matters for the record, and I'm going to go  
20      through them one by one because there's a  
21      little more than we normally have, of cases  
22      on the docket.

23              Number one,   for the record,  
24      Application 18417 of the EAG 550 Penn

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1 Street, LLC: Case for a decision has been  
2 withdrawn.

3 I'm going to go over those cases  
4 being withdrawn from the docket today.

5 The second case is 18600, of  
6 Wilfredo Bonilla. That application has been  
7 withdrawn.

8 Numbers three and four are two  
9 appeal cases, 18539 and 18540. Those two  
10 appeal cases have been withdrawn.

11 Also, Application 18694, 1362 H  
12 Street, NE, LLC -- this application has been  
13 postponed to a scheduled hearing on March  
14 18, 2014.

15 And there are three other  
16 announcements. The first of the three:  
17 18683, Holy Named Parish, has been  
18 rescheduled to next Tuesday, February 4.

19 Mr. Chairperson, the preliminary  
20 on a decision case, which is a request from  
21 ANC 7B, 18681, Shirley Cox, this morning  
22 there was a request for the Board to delay  
23 its decision, I would presume, for another  
24 week.

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1                   The second is Application 18661,  
2           Capital Investors, LLC. They have a request  
3           to postpone their application, and staff is  
4           suggesting that we reschedule that  
5           application to March 4.

6                   CHAIRPERSON JORDAN: Okay. It's  
7           now the 4th.

8                   We've sliced and diced the agenda  
9           today. Okay.

10                  Whenever you're ready, Mr. Moy,  
11           you can call 659, please. This is on the  
12           decision docket.

13                  MR. MOY: I'm looking for the  
14           right paperwork.

15                  CHAIRPERSON JORDAN: I know; one  
16           that's not X'd out with all the changes in  
17           it.

18                  MR. MOY: Exactly. All right,  
19           thank you.

20                  Okay, here we go.

21                  Application 18659, Elodie Goirdon  
22           and Andrea Xenophontos -- this is the  
23           application requesting special exception  
24           relief, under Section 223, of not meeting  
25           the side yard and the front yard setback.

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1 This was an amendment relief, so this is all  
2 variance relief from side yard and front  
3 yard setback.

4 The filing is in your  
5 application, Mr. Chairman. There's the  
6 filing from the Applicant under Exhibit 41;  
7 party oppositions filing under Exhibit 42.

8 In terms of response filings, the  
9 Applicant filed under Exhibit 43. This is a  
10 preliminary matter because in the  
11 Applicant's records filing, there is a  
12 motion to strike evidence.

13 And finally, the party  
14 opposition's response filing, under Exhibit  
15 44.

16 CHAIRPERSON JORDAN: Okay.

17 Is the Board ready to deliberate  
18 on this matter?

19 (No response.)

20 CHAIRPERSON JORDAN: This is one  
21 in which you had OP and, I believe, also,  
22 the ANC for an opposition to the requested  
23 relief.

24 There's a lot going on this case,  
25 and we had to wrestle with a lot of

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1 particular issues. But let me say, if I  
2 take the lead on this for a second, I don't  
3 buy the DCRA argument and making DCRA the  
4 scapegoat in this matter.

5 The owner and its contractor, et  
6 cetera, know what the laws are, know what's  
7 been approved, and they have a  
8 responsibility to let DCRA know that there's  
9 been a change. DCRA cannot be at  
10 everybody's home, just like the police  
11 cannot be in everybody's home, to make sure  
12 that home and everybody in there is safe.  
13 We have an honors system in life and in the  
14 government.

15 The majority of their argument  
16 was that, due to the fact that DCRA let it  
17 go so far, or sent somebody out and they may  
18 not have -- I don't even know if they  
19 observed it or did not when they came out  
20 for whatever they were looking for. I just  
21 think that's a bunch of crap. Always, the  
22 applicant has a duty to disclose to the  
23 government officials if something is being  
24 changed.

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1 I understand in this matter that  
2 they didn't realize that they had the  
3 structural issues until they opened up the  
4 walls, et cetera. But that being said, I do  
5 believe, based upon the evidence that's been  
6 presented, an exceptional situation did  
7 exist at the condition of the property  
8 regarding the structural defects that they  
9 learned about after they opened the walls.

10 That damage, as validated by  
11 their structural engineer, did require  
12 removal and does present one or several  
13 exceptional situations. The removal of the  
14 wall and the rebuilding of the porch still  
15 couldn't be done without having zoning  
16 relief. So I would say that they had an  
17 exceptional condition which created a  
18 practical difficulty.

19 There has not been any real  
20 evidence presented that there is a  
21 substantial detriment to the neighbors. The  
22 shadow studies -- We've had two different  
23 sets of shadow studies; I didn't see shadow  
24 studies from the Opposition, but only those  
25 from the Applicant. The Board initially

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1 rejected the one that was kind of the Google  
2 -- not "rejected"; we questioned it  
3 substantially. But the second set doesn't  
4 show any major impact except, maybe, some  
5 early morning June and August may have some  
6 issue.

7 But overall, the structure that's  
8 been put in place is similar to the  
9 structure that was there before, generally  
10 having the same effect, except that was  
11 semi-open. This is now closed. So I don't  
12 see where there is a substantial impact upon  
13 the neighborhood with this particular  
14 addition being there.

15 And OP, when they did their  
16 evaluation, they didn't evaluate or look for  
17 any exceptional conditions. They didn't  
18 consider the structural defect of the wall.  
19 They didn't present any evidence that way;  
20 they didn't discuss it, even in the report.  
21 And that was one of the major bases of the  
22 Applicant's concern. Nor did they talk  
23 about the shadow effect upon the building in  
24 the OP report. And then there are other

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1 homes in the neighborhood that also have  
2 front porches.

3 The Opposition, in fact, admits  
4 that is the wall had not been raised, the  
5 Applicant could have enclosed the porch as a  
6 matter of right, and the effect would have  
7 been the same.

8 So that's kind of my thought on  
9 it.

10 Anybody else?

11 Mr. Miller?

12 MEMBER MILLER: Mr. Chairman, I  
13 tend to agree with you. I think the  
14 condition of the wall, finding the rotting  
15 wall, did create an exceptional situation  
16 that led to the practical difficulty of  
17 complying with the zoning regulations  
18 because it was characterized after the fact  
19 by DCRA as new construction.

20 I see this as a pre-existing,  
21 legally nonconforming structure. It's in  
22 the same footprint. If anything, it seems  
23 like it's a matter-of-right addition in the  
24 back, maybe, that might because more shadow  
25 or more difficulty for the neighbor, by they

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1 have that as a matter of right. That's not  
2 what's before us.

3 So I tend to agree with you, that  
4 the relief that's being requested would  
5 essentially preserve the status quo in  
6 what's actually been the footprint there for  
7 many decades.

8 So I would join you in that  
9 motion if we get to that point.

10 VICE Chairman ALLEN: You've both  
11 pretty much said it. Unfortunately, the  
12 neighbor is not real happy and so you had to  
13 sort of look through all of their arguments  
14 and all of their concerns, which are valid.

15 But in terms of what's before us,  
16 what's on the record, what we can do at this  
17 Board, I think you've both stated the case,  
18 and I would support that as well.

19 CHAIRPERSON JORDAN: So then I  
20 would move that we grant the relief  
21 requested in this matter.

22 MEMBER MILLER: I second.

23 CHAIRPERSON JORDAN: Motion made  
24 and seconded.

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1 All those in favor of the motion,  
2 signify by saying "aye."  
3 (Chorus of ayes.)  
4 CHAIRPERSON JORDAN: Those  
5 opposed, nay.  
6 (No response.)  
7 CHAIRPERSON JORDAN: The motion  
8 carries.  
9 Mr. Moy.  
10 MR. MOY: I'm sorry, sir. I had  
11 a momentary lapse.  
12 The motion was made by you?  
13 CHAIRPERSON JORDAN: Yes.  
14 MR. MOY: Okay, and the motion  
15 was to approve the --  
16 CHAIRPERSON JORDAN: Approve the  
17 --  
18 MR. MOY: Approve the Applicant  
19 the relief requested.  
20 The second is the motion of Mr.  
21 Rob Miller -- I did get that one right --  
22 and also in support, Vice Chair Allen.  
23 That would be on the vote of 3 to  
24 0.

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1                   The motion carries, Mr. Chairman.  
2       We have a vacant and no other member  
3       participating.

4                   The motion carries.

5                   CHAIRPERSON JORDAN: All right,  
6       thank you.

7                   Regular full order, please.

8                   MR. MOY: Yes, sir.

9                   CHAIRPERSON JORDAN: Let's move  
10      into our hearing cases.

11                  Six-nine-six, please.

12                  BZA APPLICATION 18696

13                  MICHAEL A. RUNYON

14                  MR. MOY: Okay. That would be  
15      application 18696 of Michael A. Runyon.

16                  This application is requesting  
17      relief for a variance from lot occupancy  
18      requirements under Section 403, a variance  
19      from the rear yard under 404, court  
20      requirements under 406, and nonconforming  
21      structure requirements.

22                  (Whereupon, the parties engaged  
23      in off-mic comments on the record.)

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1                   CHAIRPERSON JORDAN:     Would the  
2     Applicant -- I really don't have any persons  
3     in opposition -- please come forward?

4                   (Whereupon,            the         witness  
5     approached the table.)

6                   CHAIRPERSON JORDAN:   One, did you  
7     complete the witness cards and give them to  
8     the court reporter?

9                   MR. RUNYAN:   No, I didn't.   I'm,  
10    I'm the Applicant.

11                  CHAIRPERSON JORDAN:   You need to  
12    complete two witness cards and give them to  
13    the court reporter before court reporter  
14    before we proceed.

15                  MR. MOY:   It's, it's right at the  
16    table.

17                  MR. RUNYAN:   Okay.

18                  CHAIRPERSON JORDAN:   Okay -- two  
19    of them, yes.

20                  MR. RUNYAN:   I apologize.

21                  CHAIRPERSON JORDAN:   I tell you  
22    what, so we don't hold it up, just say your  
23    name on the record and spell it slowly, so  
24    the court reporter will have and we can  
25    continue on.

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1                   MR. RUNYAN:    It's Michael Runyon  
2                   from 1431 Parkwood Place.

3                   CHAIRPERSON JORDAN:    But I still  
4                   need you to complete the cards, and when we  
5                   finish, it, be sure to give it to the court  
6                   reporter so that he will validate your name.

7                   MR. RUNYAN:    Okay.

8                   CHAIRPERSON JORDAN:    All right,  
9                   this is a matter where you're seeking  
10                  relief, through area variances from lot  
11                  occupancy, rear yard, court width, and an  
12                  enlargement of nonconforming use.

13                  I'm just going to say up front,  
14                  you need to convince the Board that this  
15                  property has a uniqueness that fits within  
16                  the requirements of the regulations that  
17                  allow for you to receive these variances.  
18                  As you've seen, Office of Planning has  
19                  submitted its report not to support your  
20                  particular application, and there are some  
21                  concerns that the property doesn't fit the  
22                  particular guidelines.

23                  So the Board is willing to hear  
24                  from you on how you particularly want to  
25                  meet the test to receive a variance.

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1 MR. RUNYAN: Okay.

2 Testimony by the Applicant

3 MR. RUNYAN: Thank you, Mr.  
4 Chairman and Board. I appreciate the  
5 opportunity to discuss this.

6 Essentially, in the submission of  
7 the application and subsequent lack of  
8 support from the Office of Planning, I've  
9 spoken several times to Stephen Mordfin and,  
10 and Arthur Jackson concerning their  
11 interpretation of any uniqueness on my  
12 property. The properties along that same  
13 row are of very similar lot lines on the  
14 Parkwood side. To the north and the south,  
15 they vary a little bit on the depth of the  
16 rear yard, which allows for parking as well  
17 as any other use, whether it be a yard or a  
18 patio --

19 CHAIRPERSON JORDAN: Let me help  
20 you. We've read your pleadings, your  
21 filings, and it's all the same as what  
22 you're saying to us.

23 MR. RUNYAN: Sure.

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1                   CHAIRPERSON JORDAN:       And what  
2       we're telling you is that's not getting you  
3       to where you need to be.

4                   The fact that the property is  
5       similarly situated as other properties is  
6       not the test.

7                   MR. RUNYAN:   Okay.

8                   CHAIRPERSON JORDAN:   You have to  
9       show why your property uniquely has a  
10      condition or a situation other than those  
11      other properties, not those that sit on the  
12      same side of the street where we all, this  
13      way, when across the street is different.  
14      Your property -- you've got to isolate your  
15      property and tell us why it's unique from  
16      the other properties, the ones next door,  
17      the one across the street, in general.

18                  So that's what we need you to do.

19                  MR. RUNYAN:   Sure.

20                  CHAIRPERSON JORDAN:   And I think  
21      that's probably what the Office of Planning  
22      was trying to talk to you about.

23                  But that's what we need.

24                  MR. RUNYAN:   Absolutely.

25                  CHAIRPERSON JORDAN:   Okay.

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1                   MR.    RUNYAN:           And,    and    I  
2   apologize.       This   is   been   a   pretty  
3   challenging process to really grasp on some  
4   of the zoning regulations.

5           Testimony by the Applicant (cont'd)

6                   MR. RUNYAN:   With that said, the  
7   immediate property to the left of my house  
8   has a significant bumpout, or almost three-  
9   level, addition to the house with an  
10   enclosed front, which is very different from  
11   my, my property.

12                   Although I don't get any credit  
13   for the open court distance because it's too  
14   short for the minimum standards, that,  
15   that's something I chose not to propose, a  
16   property line extension of the proposed  
17   structure.       Yet, the property to my  
18   immediate east actually has a deck of the  
19   same proportions as the, the existing deck  
20   before I purchased the property but it was  
21   unable to be recreated after they renovated  
22   it.

23                   The unique difference between my  
24   property -- both have parking spaces; some  
25   are very difficult to use just due to the

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1 short depth of the rear setback in the  
2 property. So proposing a smaller deck or a  
3 smaller structure would make that more  
4 challenging because of the position of the  
5 posts without, you know, having some of the  
6 same issues that the Office of Planning had,  
7 had cited in their report, most notably, the  
8 security of the neighbors, without putting  
9 it to one side or another. And the height  
10 of the deck still has to be above eight feet  
11 in order to still accommodate the parking,  
12 parking lot or the driveway space.

13 While there is a garage, and as  
14 noted in the OP report, that is currently  
15 utilized for storage. The garage itself is  
16 maybe nine feet wide. It doesn't allow for  
17 a lot of room to even bring a Volkswagen in  
18 there, which is what I own. So the usage of  
19 that garage is mainly for storage because  
20 there's no other way we can get a car in  
21 there.

22 We do have enough space to park  
23 the car back there, but we have to maintain  
24 that parking spot, so I can't put a lower  
25 level structure -- which wouldn't add to the

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1 lot space. And again, most of the neighbors  
2 have similar, similar issue as far as  
3 maintaining that position of a parking space  
4 in the rear of their yards.

5 I think, as the Office of  
6 Planning had noted, it wasn't extended to  
7 the edge of the property line, and there is  
8 no credit for that, even though a right of  
9 relief would have been easily obtainable to  
10 make that deck all the way to the edge  
11 because it didn't add any value, whether it  
12 was short of the edge of the property line  
13 on the open court side, but it was done to  
14 maintain some privacy for the residents next  
15 door.

16 CHAIRPERSON JORDAN: Okay.

17 Additionally -- not that we've  
18 gotten this where we need to be -- I think  
19 Office of Planning also gave you a lift by  
20 say there are some alternative ways for you  
21 to get this deck in. And one of the other  
22 parts of this getting the relief you're  
23 requesting is that there can't be other of  
24 any other way, but for relief from the

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1 zoning regulations, to allow you to get some  
2 use of your property.

3 OP has made some recommendations,  
4 and I think I saw something -- it was a  
5 rejection by you about shortening the deck,  
6 or what have you. I don't know if you care  
7 to discuss that.

8 MR. RUNYAN: Sure, I mean it's  
9 not that I think it's unacceptable just  
10 because it's too small. It, it's not a  
11 really good reward for the risk and the  
12 effort to build out.

13 We could, you know, enclose the  
14 front porch and probably extend that all the  
15 way to the neighboring yard. From an  
16 athletic appearance, it doesn't seem to look  
17 very nice, by some of the other neighbors  
18 have done in the rear.

19 As far as making the deck four-  
20 by-nine, which is what was proposed by the  
21 OP, it's even smaller than the front porch,  
22 so it's not going to add a lot of value.  
23 And maybe that's a challenging position, but  
24 it certainly would probably not accommodate

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1 a family of four, which is what currently is  
2 living there with, with two small children.

3 What I'm really looking for is  
4 recreational expansion for the kids, who  
5 like to go outside or at least be outside if  
6 that includes a barbecue or, you know,  
7 anything of that nature.

8 And quite frankly, four people on  
9 a four-by-nine deck, you know, which, would  
10 still require it to be raised, which would  
11 still require considerable effort and a  
12 hardship to raise that deck, put posts in  
13 the ground, and present a significant  
14 challenge based on where the supports for  
15 that deck would be without being to one side  
16 of the, the home or not.

17 The Juliet balcony that's in the  
18 back of that house is square in the middle  
19 of the house. So, if it's not going to  
20 extend across the parking space completely,  
21 that, that may be a challenge.

22 It's certainly not impossible,  
23 and that wasn't my intent as far as a  
24 response. It's just, considering the cost  
25 of the construction and the reward that we'd

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1 get out of that use of that addition to the  
2 facility, it, it's almost as if you could  
3 extend the walls and the, and the open court  
4 and gain less than a foot on each side. It  
5 wouldn't be worth the expense to do, in my  
6 mind.

7 CHAIRPERSON JORDAN: Board, do  
8 you have any questions here?

9 MEMBER MILLER: Well, I didn't  
10 have a question; I just want to put it on  
11 the record if you haven't already -- maybe I  
12 missed it -- that the ANC 1A recommended  
13 that the request be approved.

14 Their statement says that "[t]he  
15 proposed rear deck addition is consistent  
16 with similar and existing rear deck  
17 additions in the neighboring row dwellings.  
18 Furthermore, the proposed rear deck addition  
19 is supported by no fewer than 10 neighbors  
20 in the immediate vicinity, including the  
21 neighbors of the abutting properties."

22 And I just wanted to ask the  
23 Applicant, your immediate neighbors on both  
24 sides, are they among those that support --

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1 I don't know if has submitted something in  
2 the record, but --

3 MR. RUNYAN: Yes. Actually, I  
4 went around and got -- over 20 people had  
5 signed a petition saying that they approve  
6 it, including the immediate neighbors to  
7 either side, the front and the rear.  
8 Obviously, the front doesn't get impacted by  
9 the deck in the rear of my property.

10 But just to follow up, along with  
11 the 200-foot radius letters that were sent  
12 out, a lot of people ask me about it. All  
13 of them said, you know, this is crazy; you  
14 know, we totally support that; we'd like to  
15 see some investment in the properties in the  
16 neighborhood.

17 And certainly, the immediate  
18 neighbor to my east has a deck. It's  
19 actually a group home, but I've spoken with  
20 all the, the tenants in the home; they're  
21 all in support.

22 And then the, on the other side  
23 of my property, both have signed the  
24 petition, as well. And, and she's in full  
25 support. She's been trying to improve her

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1 property for a number of years and certainly  
2 has no problems with a deck or any concerns  
3 on the security aspect.

4 MR. RUNYAN: Okay, thank you.

5 CHAIRPERSON JORDAN: Any other  
6 questions?

7 VICE Chairman ALLEN: Thank you  
8 for coming down.

9 MR. RUNYAN: All right.

10 VICE CHAIR ALLEN: I just want to  
11 clarify something you said in your testimony  
12 there.

13 So, in your opinion, it would be  
14 a financial hardship for you to do all of  
15 the construction, and do the posts, where  
16 they would have to be, and that sort of  
17 thing, too only do the Juliet -- I've just  
18 been trying to make sure I understood what  
19 your point was.

20 MR. RUNYAN: I apologize if I  
21 rambled.

22 There's a Juliet balcony, or a  
23 balcony with nothing, you know, there but  
24 two double-doors, two French doors. It was  
25 clearly the intent of the original owner, or

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1 at least the previous owner, to develop that  
2 into the existing deck, which -- the deck  
3 posts are still there, the same exact size,  
4 shape, model as the neighboring deck -- so  
5 no doubt, they were probably likely built at  
6 the same time. They're even the same color.  
7 So it, it was always her intention to  
8 rebuild that deck. But again, I think she  
9 couldn't get a permit to do so.

10 So what I was saying is, you  
11 know, to dig up those posts and put it back,  
12 which is still above or beyond that four-by-  
13 nine recommendation from OP, would be a  
14 similar cost and hardship as far as  
15 financial, to do the construction, to dig up  
16 the concrete, and to place those posts in a  
17 way in which you can still park a car back  
18 there, and the reward would be much smaller  
19 and probably less usable space.

20 CHAIRPERSON JORDAN: But you're  
21 not saying that there is a greater -- that's  
22 another aspect. But, just putting a smaller  
23 deck from the request, that doesn't increase  
24 your cost.

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1                   MR. RUNYAN:     Well, not from a  
2     bigger deck, I guess.

3                   CHAIRPERSON JORDAN:     Right --  
4     from a bigger deck, and from a deck, as OP  
5     has recommended, to maybe a smaller deck --  
6     the deck cost is not increased building a  
7     smaller one.

8                   MR. RUNYAN:     If, if I was to  
9     reconfigure the rear parking -- because it  
10    is a wider space -- but there is a raised  
11    concrete slab, which would require  
12    excavation of that slab to move the parking  
13    space.

14                  You know, whether or not you use  
15    the garage is totally separate. But the  
16    parking space, as well, would require  
17    moving, potentially, the AC compressor,  
18    shaving off a part of the concrete slab  
19    that's raised in the back, the back lot, as  
20    well as reconfiguring where a post would be.

21                  CHAIRPERSON JORDAN:     And you  
22    don't have to do that, as with a larger  
23    deck?

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1                   MR. RUNYAN:       No, because the  
2 posts, actually, are all the way to the edge  
3 of the --

4                   CHAIRPERSON JORDAN:       They're  
5 already there.

6                   MR. RUNYAN:       Yeah, they're not  
7 across the, the property line, but they're,  
8 they're at the edge of the parking space.  
9 And on the opposite side, they're towards  
10 the end of, of the far side. But that  
11 doesn't impact that raised parking slab  
12 because we're not -- or the raised; sorry --  
13 the raised concrete slab, which actually  
14 goes to an access door for storage.

15                   Mr. Jackson and I were speaking  
16 about this, and we're not really sure  
17 exactly what the original intent or purpose  
18 of that raised slab was, other than raising  
19 it up to the level of the storage door, or  
20 what came first; we're not sure.

21                   But it is something that I  
22 actually talked about with the contractor,  
23 and they said that excavating that would  
24 require some considerable, you know, re-

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1 pouring of the concrete to make it, you  
2 know, withstanding, going forward.

3 So, taking that into --

4 CHAIRPERSON JORDAN: On the  
5 property now, you have these posts that are  
6 setting there for a deck that was supposed  
7 to go there, or for the raised slab.

8 MR. RUNYAN: Well, and full  
9 confession: Obviously, I made a huge  
10 mistake by months ago and decided to go  
11 ahead and build the deck and was stopped by  
12 DCRA. And subsequently, I went through the  
13 hearing, pay a penalty, and I'm reapplying.

14 CHAIRPERSON JORDAN: So did you  
15 put those posts there, had you already  
16 started your work, and that's what you're  
17 talking about, that it got stopped?

18 MR. RUNYAN: There's, there's two  
19 posts. There's still the original posts  
20 that there, from when I purchased the  
21 property, of what the previous deck was.

22 CHAIRPERSON JORDAN: Meaning --

23 MR. RUNYAN: Now --

24 CHAIRPERSON JORDAN: -- there are  
25 two posts.

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1                   Were those two posts there when  
2                   you purchased the property?

3                   MR. RUNYAN:   Four posts -- yes.

4                   CHAIRPERSON JORDAN:   There were  
5                   four posts there.

6                   MR. RUNYAN:   Yeah.

7                   CHAIRPERSON JORDAN:       And you  
8                   removed them.

9                   MR. RUNYAN:   No.

10                  CHAIRPERSON JORDAN:   Okay.

11                  MR. RUNYAN:   I've added posts for  
12                  a newer deck.

13                  CHAIRPERSON JORDAN:   All right,  
14                  so those posts are still there, that were on  
15                  the property when you got there,

16                  MR. RUNYAN:   Correct.

17                  CHAIRPERSON JORDAN:       Now DCRA  
18                  came to stop you when you were doing, what?

19                  MR. RUNYAN:       Well, illegal  
20                  construction; I didn't have a permit for the  
21                  deck that I, I had proposed.

22                  CHAIRPERSON JORDAN:   I got you;  
23                  okay.

24                  MR. RUNYAN:   So that's how this  
25                  property --

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1 CHAIRPERSON JORDAN: Which is in  
2 another footprint than those four posts that  
3 were already there.

4 MR. RUNYAN: Absolutely.

5 CHAIRPERSON JORDAN: Got you.  
6 Okay. Okay.

7 MR. RUNYAN: Sorry. That's --

8 CHAIRPERSON JORDAN: No, no. I'm  
9 just trying to understand.

10 MR. RUNYAN: Yeah.

11 You know, one of them actually is  
12 hanging the AC compressor line that goes  
13 back into the house, but since it's a  
14 lowered back end of the property, it's on  
15 the ground floor, but it's different from  
16 the first floor. So that actually runs  
17 along the same line as the original deck  
18 posts.

19 CHAIRPERSON JORDAN: Okay.

20 MR. RUNYAN: And on the far side,  
21 it actually holds up the fence.

22 CHAIRPERSON JORDAN: Okay.

23 Any other questions for the  
24 Applicant?

25 (No response.)

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1                   CHAIRPERSON JORDAN:     Is there  
2     anything else before we turn to the Office  
3     of Planning?

4                   MR. RUNYAN:     I think, for the  
5     most part, it's mostly been said. You know,  
6     and if I have that chance to add anything  
7     after the Office of Planning, that would be  
8     nice.

9                   CHAIRPERSON JORDAN:     So the  
10    overhang, the wood-framed overhang that sets  
11    above the garage and the posts that are  
12    right up next to the fence, was that there  
13    when you bought the property, or is that  
14    what you put there?

15                  MR. RUNYAN:     That's what I put  
16    there.

17                  CHAIRPERSON JORDAN:     Okay.

18                  MR. RUNYAN:     What you're looking  
19    at their in the pictures?

20                  CHAIRPERSON JORDAN:     Yes.

21                  MR. RUNYAN:     Yeah, that's the as-  
22    built and subsequently proposed deck.

23                  CHAIRPERSON JORDAN:     So you've  
24    already got a structure setting there.

25                  MR. RUNYAN:     I do. I do.

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1                   I tried to get a permit multiple  
2       times with DCRA, as documented in my  
3       application. No doubt, it was fairly  
4       frustrating in the process. I had heard of,  
5       of people getting, you know, special  
6       variances or exceptions, and also getting  
7       permits.

8                   But I was able to get a permit  
9       to, to reconstruct the porch in the front,  
10      based on some water damage that had been  
11      there, where it was brought it out. And I  
12      was able to get a fence permit, which  
13      clearly is not a deck permit. And  
14      subsequently, I, I made some changes to the  
15      property, by I was not able to get a deck  
16      permit.

17                  And, and the last thing I was  
18      told by DCRA -- not to put any blame on them  
19      because, certainly, it was my choice to go  
20      ahead with the illegal construction -- but  
21      was just that they should go ahead and do  
22      it. And when I looked around and saw, you  
23      know, nearly 50 percent of the people in my  
24      neighborhood already have decks, it, it was  
25      kind of daunting.

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1                   CHAIRPERSON JORDAN: Well, let me  
2 say this because it's come up a couple of  
3 times: Just because some neighbors have  
4 something to their house, an addition, and  
5 other things, doesn't mean that every  
6 property can do it.

7                   The standard is not 'what my  
8 neighbor has'. The standard is set  
9 depending on the type of relief. And so  
10 they may have had some type of situation  
11 where they presented it.

12                  We do have some people do some  
13 things illegally, and get caught, like you  
14 know.

15                  MR. RUNYAN: Very well.

16                  CHAIRPERSON JORDAN: But I just  
17 want to make sure we're clear that just  
18 because the neighbor to the left and right  
19 has it, that is not our standard. Or even  
20 if it makes the neighborhood look better,  
21 it's not the standard.

22                  MR. RUNYAN: Absolutely.

23                  CHAIRPERSON JORDAN: So, if there  
24 aren't any other questions of this witness,

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1 I'm going to turn to the Office of Planning,  
2 Mr. Jackson.

3 Please.

4 Recommendation of the Office of Planning  
5 (Arthur Jackson)

6 MR. JACKSON: Good morning, Mr.  
7 Chairman and members of the Board. I am  
8 Arthur Jackson, DC Office of Planning.

9 The Office of Planning report is  
10 before you, and our recommendation is  
11 basically that we don't think the Applicant  
12 meets the standards, his application meets  
13 standards for the extent of the building  
14 relief that they are requesting, and we  
15 cannot support the application.

16 And that concludes a brief  
17 summary of the report, and we will be able  
18 to answer questions.

19 CHAIRPERSON JORDAN: Regarding  
20 the smaller deck, where would that go?

21 MR. JACKSON: Well, what we we're  
22 saying was that, you know, because of the --  
23 well, if you look at Picture --

24 CHAIRPERSON JORDAN: Yes.

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1                   MR. JACKSON:   Picture 1 that the  
2   Applicant submitted --

3                   CHAIRPERSON JORDAN:   Yes.

4                   MR. JACKSON:   -- you'll see that  
5   there's a space pictured on the left side of  
6   the building between the two dwellings.

7                   MR. RUNYAN:   Space?   I don't, I  
8   don't see any space on mine.

9                   CHAIRPERSON JORDAN:   Okay, on the  
10   first picture?

11                  MR. JACKSON:   Yes.

12                  CHAIRPERSON JORDAN:   Okay.   Yes,  
13   yes, yes.

14                  MR. JACKSON:   There is actually a  
15   space on this side of the building, and we -  
16   -

17                  CHAIRPERSON JORDAN:   I see a  
18   white -- there, is that a space?

19                  MR. JACKSON:   It's, it's --

20                  CHAIRPERSON JORDAN:   Is it a  
21   little sliver?

22                  MR. JACKSON:   Well, that's a,  
23   that's actually an open court.

24                  CHAIRPERSON JORDAN:   Oh, is that?

25                  MR. RUNYAN:   Yes.

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1                   CHAIRPERSON JORDAN:   How big is  
2   that?

3                   MR. RUNYAN:   Well, I'm not sure.  
4   Well, let's see.

5                   On the surveyor's -- I have the  
6   surveyor's document, assessment document,  
7   and -- let me see. What does it say?

8                   CHAIRPERSON JORDAN:   Do you know  
9   how big that open court is?

10                  MR. RUNYAN:   Yeah, the one side  
11   is actually about a foot and a half, and the  
12   other side is about 10 inches.

13                  So, you know, the one side, you  
14   can actually fit in. And I've gone in there  
15   many times to actually insulate it because  
16   it was a bit drafty in the house. It's an  
17   old sun porch that was enclosed very  
18   haphazardly.

19                  So, developing that -- I  
20   mentioned that really briefly -- but  
21   developing that or extending that to add  
22   usable space to the property, since it would  
23   be a right of relief by the owner and  
24   doesn't, doesn't get added to the total lot

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1 space, wouldn't really be worth the other  
2 effort to expand that.

3 MR. JACKSON: Okay. I've got the  
4 surveyor's document here.

5 CHAIRPERSON JORDAN: Okay.

6 MR. JACKSON: It's, the overall  
7 width of the existing construction is 17  
8 feet, and the, and the dwelling is actually  
9 18 feet wide. So it's about a foot and a  
10 half in the front.

11 But then in the front, if you  
12 look at the front photograph on the OP  
13 report, you'll also note that the front deck  
14 --

15 CHAIRPERSON JORDAN: On your  
16 report, you said?

17 MR. JACKSON: Yes -- the front,  
18 the photograph on page 3. The front porch  
19 actually is also a setback from the side  
20 property line because that, that also  
21 creates open courts on the front, which adds  
22 to the lot occupancy.

23 So the situation is that  
24 basically, you have, you just square off the  
25 existing building and then multiply it by

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1 the depth, and that gives you the lot  
2 occupancy, which is, that explains my number  
3 that you received.

4 Now, with regard to -- I believe  
5 your question that you raised was a good  
6 one, about the -- what was your question  
7 about? I forgot now.

8 (Laughter.)

9 CHAIRPERSON JORDAN: Well, about  
10 the location of the smaller deck, that it  
11 would put them within the occupancy level.

12 MR. JACKSON: Well, actually, the  
13 issue for us was that because of the extent  
14 of the building that already exists and the  
15 way the zoning regulation is calibrated, in  
16 that it includes nonconforming courts that  
17 are too small, that are smaller than the  
18 standard, the Applicant has some leftover  
19 lot.

20 Okay, under 223, they go up to 70  
21 percent, and so the existing construction is  
22 67-percent lot occupancy. So it has -- I  
23 think this translates to about 36 square  
24 feet.

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1                   What we were suggesting was that  
2                   he could build an addition, have a deck or a  
3                   porch that --

4                   CHAIRPERSON JORDAN:   Bring it in  
5                   some.

6                   MR. JACKSON:   Yes -- he can make  
7                   it 36 feet wide and put it however -- I'm  
8                   sorry; 36 feet in area -- and put it out  
9                   ever he wanted to --

10                  CHAIRPERSON JORDAN:   Thirty-six  
11                  feet -- oh; overall area.

12                  MR. JACKSON:       Right; overall  
13                  area.

14                  CHAIRPERSON JORDAN:   Now it would  
15                  be nine-by-four.

16                  MR. JACKSON:   So it's been nine-  
17                  by-four or the nine -- it could, it could  
18                  use the existing structure, frankly, because  
19                  the existing structure, the framing that he  
20                  has there, he could build something that  
21                  extends out to use the existing framing.

22                  We weren't actually talking  
23                  about, saying how he could build that area.  
24                  We were just saying that he could do it. He  
25                  has that balance of area that he could use

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1 to build what essentially would be a large  
2 porch, a large front porch. It wouldn't be  
3 a very large deck. And then that, in fact,  
4 could be enclosed if he'd like to make it  
5 bigger.

6 So he does have 36 feet in area  
7 that he can use for whatever in the back.

8 CHAIRPERSON JORDAN: Right. A  
9 square; right.

10 Now, the other point to raise is  
11 that -- so we weren't, the Applicant went  
12 into one option, which would be to eliminate  
13 the existing structure and build more  
14 structure, and the other option would be to  
15 utilize a portion of the existing structure  
16 to support a deck, an additional deck that  
17 was 36 feet in area.

18 That's, that the design  
19 consideration, and it can't, it could be  
20 done. So it wouldn't necessarily require  
21 that you basically tear up everything that's  
22 there.

23 MR. JACKSON: Okay, the only  
24 other point we wanted to bring out was that  
25 based on the site visit to the properties,

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1       there are -- along this stretch of the  
2       street where the, there are row houses along  
3       the entire stretch, there are 19 row  
4       dwellings. And we counted that there are  
5       seven of those row dwellings backyards that  
6       are entirely paved in one way or the other.  
7       That is, it's either paved as the Applicant  
8       has it, or it's paved with driveway and then  
9       raised concrete steps that come up to a  
10      base, and then you have stairs going up. Or  
11      it's substantially paved with planters on  
12      it. So seven of the 19 have their yards  
13      entirely paved.

14                   There are, I'd say, five to --  
15      well, I'd say five -- decks that appear to  
16      be nonconforming. But then you do have some  
17      other dwellings that are relatively small  
18      that don't go back quite as far. They have  
19      decks, but that deck may be allowed because  
20      the actual footprint of the buildings is  
21      already too small.

22                   CHAIRPERSON JORDAN:       Or they  
23      didn't have a front porch or something.

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1                   MR. JACKSON:    Well, they, they  
2                   actually are not done as deep if you look at  
3                   the whole street.

4                   CHAIRPERSON JORDAN:   Okay.

5                   MR. JACKSON:    So we have, I  
6                   counted five decks.

7                   And also note, I didn't see any  
8                   exceptions being granted in this square for  
9                   any type of additional structure.

10                  CHAIRPERSON JORDAN:   You looked.

11                  MR. JACKSON:    Yes, and I --

12                  CHAIRPERSON JORDAN:    We might  
13                  have some legal stuff there too.

14                  MR. JACKSON:    We're not dealing  
15                  with the --

16                  CHAIRPERSON JORDAN:    I know; I  
17                  understand. But --

18                  MR. JACKSON:    But there, there  
19                  may have been a culture of building  
20                  additional area that shouldn't have been  
21                  there.

22                  And I will note that his, the  
23                  neighbor's deck -- the neighbor adjacent to  
24                  him --

25                  MR. RUNYAN:    Right.

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1                   MR. JACKSON:  -- was originally a  
2     little smaller, at least based on our  
3     aerials.  I think that you can see that on  
4     the aerial in the Office of Planning report  
5     that, that it --

6                   CHAIRPERSON JORDAN:  Yes.

7                   MR. JACKSON:  -- yes.

8                   The neighbor -- okay, in figure  
9     2, you see the existing structure and then  
10    you see what appears to be -- the dwelling  
11    to the right -- there appears to be a line  
12    there that would have been a deck so that if  
13    -- they built something on there, it was  
14    previously a little smaller, but it has  
15    since grown.  So the newer structure, based  
16    on the photograph that Applicant has  
17    provided, appears to be larger.  So -- in  
18    fact, on the -- it appears to be that way.

19                  So the concern would be that the,  
20    the property just simply does not meet the  
21    first standard for approval.

22                  CHAIRPERSON JORDAN:  All right.

23                  MR. JACKSON:  And we think the  
24    impacts -- we recently explained that we  
25    thought the impacts would be less on the

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1       neighboring property if they built a  
2       smaller, more of a porch- like structure in  
3       the back, which is --

4                You'll have plenty of fresh air,  
5       in effect --

6                -- utilizing the existing  
7       structure.

8                But we do note that the  
9       Applicants did make the inquiry about, to  
10      their neighbors, about whether they would be  
11      concerned about the impacts of it, and the  
12      neighbors indicated that they would not, so  
13      --

14               CHAIRPERSON JORDAN:       So, if  
15      they're going to do a smaller deck based  
16      upon the legal construction that's already  
17      there, they'll have to bring those posts in  
18      some --

19               MR. JACKSON:   No, no, no.   I'm  
20      just visualizing.

21               CHAIRPERSON JORDAN:   Okay, yes.

22               MR. JACKSON:   I'm visualizing  
23      taking off the deck platform.

24               CHAIRPERSON JORDAN:   Yes.

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1                   MR. JACKSON:     -- removing the  
2     last two posts, and utilizing --  
3                   CHAIRPERSON JORDAN:  Oh, I see.  
4                   MR. JACKSON:     -- the two posts  
5     closer to the dwelling.  
6                   CHAIRPERSON JORDAN:  So it would  
7     be cantilevered.  
8                   MR. JACKSON:     It would be  
9     something with a cantilevered --  
10                  CHAIRPERSON JORDAN:  By cutting  
11     what's already there in half.  Is that what  
12     it is?  
13                  MR. JACKSON:  Right.  
14                  CHAIRPERSON JORDAN:  So like you  
15     would have if you built a similar structure,  
16     say, in the backyard, and you just had the  
17     floor in the middle of it, but the support  
18     spanned the entire rear yard.  
19                  MR. JACKSON:  Again, we weren't  
20     trying to design it for him.  We think  
21     that's an option, and we just, and you just  
22     identified that, under the current  
23     regulation, under 223, they would have 36  
24     square feet they could utilize however they  
25     felt, based on their needs.

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1 CHAIRPERSON JORDAN: And the  
2 entry and exit to that deck, whichever one  
3 that goes there, actually happens from those  
4 French doors on that second level.

5 MR. JACKSON: Yes, it could be  
6 centered on those French doors, and it  
7 wouldn't affect, have any impact on the  
8 driveway because, again, it would be using  
9 the existing structure.

10 But the, the post closest to rear  
11 property line would, would go away because  
12 there wouldn't be -- or they could use it  
13 for something else -- and it would give the  
14 Applicant some additional space outdoors.

15 But again, that's a design issue  
16 that we're not getting into. We just wanted  
17 to point out that out as, that's some of the  
18 thinking that we were, that we just quickly  
19 went through right now.

20 The issue is you do have just 36  
21 feet to work with. And that is, we repeat  
22 that it's still an option.

23 CHAIRPERSON JORDAN: So on four-  
24 by-nine -- okay, got you. Four-by-nine is  
25 going to -- okay, got you.

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1 CHAIRPERSON JORDAN: Any other  
2 questions for the Office of Planning from  
3 the Board?

4 (No response.)

5 CHAIRPERSON JORDAN: I do  
6 appreciate the two Jacksons going out there.  
7 It really helps us that you guys put eyes on  
8 and can tell us what's really going on in  
9 the neighborhood. It means an awful lot to  
10 the Board.

11 Does the Applicant have any  
12 questions you would like to ask, Mr.  
13 Jackson?

14 MR. RUNYAN: Mr. Jackson has been  
15 extremely helpful, as you noted, you know,  
16 and I think the only other option that I  
17 would have to actually, you know, build a  
18 larger deck would be to tear down the porch  
19 in the front.

20 You know, and as you mentioned,  
21 my porch doesn't extend to the property  
22 lines, so the, the smaller porch doesn't,  
23 doesn't add to or subtract from the total  
24 lot occupancy utilized. That said, you  
25 know, I'd rather not tear down the porch.

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1 It keeps the rain off when you're coming  
2 towards the house.

3 And you know, it certainly would  
4 be nice to have any additional deck space on  
5 the rear of the property.

6 CHAIRPERSON JORDAN: You're  
7 getting a little bit ahead of yourself. I  
8 just asked you if you have any questions  
9 that you would like to ask him.

10 MR. RUNYAN: Sorry.

11 CHAIRPERSON JORDAN: You'll have  
12 a chance to do a rebuttal and closing. But  
13 I, I understand that you don't understand or  
14 process.

15 Well, let's do this. Let's move  
16 on.

17 Anyone here from the Department  
18 of transportation?

19 (No response.)

20 CHAIRPERSON JORDAN: I believe  
21 not, and we do a letter from the Department  
22 of Transportation, which does not object to  
23 the relief being requested.

24 Is there anyone here from the ANC  
25 1A?

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1 (No response.)

2 CHAIRPERSON JORDAN: Is there a  
3 representative ANC 1A?

4 (No response.)

5 CHAIRPERSON JORDAN: We do have a  
6 letter in support, in which they voted  
7 unanimously, 9-0, to support your  
8 application and to which the Board will give  
9 a certain great weight.

10 Is there anyone here wishing to  
11 speak in support of this application, anyone  
12 wishing to speak in support?

13 (No response.)

14 CHAIRPERSON JORDAN: Is there  
15 anyone wishing to speak in opposition to  
16 this application?

17 (No response.)

18 CHAIRPERSON JORDAN: Then we will  
19 turn back to you, Mr. Runyan, and ask, is  
20 there something that you want to continue to  
21 say to add into your rebuttal?

22 MR. RUNYAN: Sorry; I've had  
23 eight months to think about it, so I've got  
24 a few thoughts in my head, but --

25 Closing Comments of the Applicant

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1                   MR. RUNYAN:    I, I think, pretty  
2   much the majority of the argument has been  
3   presented.       I have nothing else in  
4   particular to add.

5                   I think, just from residence and,  
6   you know, owner in this city, obviously,  
7   it's something of concern.  If, if we can  
8   find a way to work within the zoning  
9   regulations, even though we've got houses  
10  that were predating those zoning  
11  regulations, we kind of start off with a bit  
12  of a handicap to begin with.

13                  So I appreciate the time to  
14  review and chance to present it.

15                  CHAIRPERSON JORDAN:    Did this  
16  house predate the zoning regulations?

17                  MR. RUNYAN:  Yeah, I think it was  
18  1920, and the zoning regulations that were  
19  looking at are --

20                  CHAIRPERSON JORDAN:       A 1920  
21  house.

22                  MR. RUNYAN:  Yeah.

23                  CHAIRPERSON JORDAN:  I see.

24                  MR. JACKSON:  Mr. Chairman, just  
25  an issue -- the last two pages of the Office

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1 of Planning report, it's a plat from 1920.  
2 The plat actually was before they added the,  
3 they closed in the rear of the houses, so it  
4 originally started off as an L-shaped  
5 structure. And then you, you see they're  
6 all uniform.

7 CHAIRPERSON JORDAN: Yes.

8 MR. JACKSON: And of course, each  
9 individual property owner added on after  
10 that. And that, the contrasting photograph  
11 is the one that you have in the aerial that  
12 shows how -- the annual aerial -- that shows  
13 how different additions were made since that  
14 time.

15 So it has seen a number of  
16 changes.

17 CHAIRPERSON JORDAN: All right.  
18 Okay.

19 Four by nine -- did you measure  
20 of four-by-nine and its effect?

21 MR. RUNYAN: Yeah, yeah -- no, I  
22 have. I certainly, I gave it a look in the,  
23 in the rear of the property, and certainly  
24 figuring out how the existing illegal  
25 construction would match that.

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1                   And as Mr. Jackson noted, I  
2                   hadn't really discussed exactly how that  
3                   would work structurally. I did get plans  
4                   drawn up for, for the proposed deck but  
5                   hadn't, hadn't done that, as far as the  
6                   actual architectural plans.

7                   But looking at the space -- and,  
8                   and I can compare it immediately with the  
9                   space next door because the deck there spans  
10                  that whole distance. Cantilevering the deck  
11                  and making it only nine, it does kind of set  
12                  square in the middle. But also, it's fairly  
13                  limited. It's even smaller than the porch  
14                  in the front, which spans, I think, 16 feet  
15                  across. Or maybe --

16                  CHAIRPERSON JORDAN: Okay.

17                  MR. RUNYAN: -- yeah, 15.

18                  CHAIRPERSON JORDAN: Mr. Miller  
19                  has a question.

20                  MEMBER MILLER: What is the  
21                  width, what are the dimensions of the deck  
22                  that you wanted to put there?

23                  MR. RUNYAN: Oh, the actual width  
24                  of the proposed deck?

25                  MEMBER MILLER: Yeah.

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1                   MR. RUNYAN:     It's actually 16  
2 feet across, and then --  
3                   MEMBER MILLER: The 16, is it --  
4                   MR. RUNYAN:    -- and a half feet  
5 deep.  
6                   MEMBER MILLER: Sixteen-by-twelve  
7 and a half.  
8                   CHAIRPERSON JORDAN: Yes, because  
9 it's 16 feet across the rift of your  
10 property --  
11                  MR. RUNYAN:    Correct.  
12                  CHAIRPERSON JORDAN:    -- your  
13 house.  
14                  MR. RUNYAN:    Yeah, so it's, it's  
15 18 feet all the way across the property  
16 lines. And then we would cut that short to  
17 keep with the open court that exists and  
18 prevent it from touching the neighbors'  
19 property.  
20                  CHAIRPERSON JORDAN: Mr. Jackson?  
21 I'm sorry; please go ahead.  
22                  MR. JACKSON:    I was going to  
23 clarify he, he, yes, he noted that it  
24 actually in line with the existing

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1 structure, which is already set back to both  
2 property lines.

3 CHAIRPERSON JORDAN: And that's  
4 16; right?

5 MR. JACKSON: Yes.

6 CHAIRPERSON JORDAN: Set back  
7 probably to two and two or something, or one  
8 a half and one and a half.

9 MR. JACKSON: One half and one.

10 MR. RUNYAN: It's an odd shape.

11 CHAIRPERSON JORDAN: All right.

12 Board, any other questions?

13 (No response.)

14 CHAIRPERSON JORDAN: Anything  
15 else you want to present to the Board at  
16 this time?

17 MR. RUNYAN: I don't think so.

18 CHAIRPERSON JORDAN: Okay, then  
19 we will conclude this hearing.

20 Is the Board ready to deliberate  
21 on this? Or does anyone want to -- don't  
22 look at me.

23 Do we want to deliberate, or hold  
24 it until another time?

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1                   BZA MEMBER MILLER:       Yes, I'm  
2 ready to

3                   CHAIRPERSON JORDAN:       What's on  
4 your mind?

5                   BZA MEMBER MILLER:       Well, I am  
6 sympathetic to the Applicant's request for  
7 relief to put a rear deck on his property so  
8 his two kids can have a place to play, we  
9 seem to make it so difficult. But we do  
10 have these regulations for reasons.

11                   What's almost unique is that he's  
12 one of the few that doesn't have the extra  
13 space. I know that it doesn't meet the  
14 standard of the zoning regulations, but it's  
15 somewhat remarkable in this case, in this  
16 particular neighborhood.

17                   That's it's on my mind, Mr.  
18 Chairman, that I'm sympathetic to the  
19 Applicant's request for relief. The  
20 neighbors all support it. ANC supports it.  
21 And that's where I am.

22                   CHAIRPERSON JORDAN:       Yeah, we've  
23 got two opposite great weights, OP and ANC -  
24 - hopefully, note the other side.

25                   Ms. Allen, what are you thinking?

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1                   VICE CHAIR ALLEN: I, too, noted  
2                   the ANC and neighbor support.

3                   There was somewhat of financial  
4                   hardship argument. We've tried to stretch  
5                   it little bit, especially given our  
6                   empathetic -- which I share with my  
7                   colleague, on the Applicant's request.

8                   I'm trying to understand from OP  
9                   the, I guess, lack of -- what's the word?

10                  CHAIRPERSON JORDAN: Uniqueness.

11                  VICE CHAIR ALLEN: Thank you --  
12                  lack of uniqueness.

13                  And you know, even though we're  
14                  laughing about the fact that almost as  
15                  unique is that everybody, including his  
16                  next-door neighbor, has this deck, and then  
17                  asking him, in order to do what he's asking  
18                  to do, he needs to basically cut off his  
19                  front porch -- I mean it doesn't make a lot  
20                  of sense.

21                  So, I'm between a rock and hard  
22                  place, but I'm trying to figure it out  
23                  because I am sympathetic, and I do think the  
24                  regs allow him to build a porch, but the

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1       regs allow him to build a porch that really  
2       doesn't make sense for his situation.

3                       So I'm hoping that one of my  
4       esteemed colleagues here will help me get to  
5       --

6                       CHAIRPERSON JORDAN: I think we  
7       can find some uniqueness in that one  
8       inherited place that was already over the  
9       lot occupancy requirement.

10                      This seems to be less useful  
11       space between his property and the backyards  
12       of others, not including the decks that  
13       they're using. The backyard also has a  
14       different configuration, with the concrete  
15       and the raised-level concrete that's already  
16       back there, which is different and which can  
17       provide some uniqueness to our decision  
18       here. And that adds into the cost of taking  
19       that particular thing down, to remove those  
20       posts if necessary because the posts still  
21       have to come in.

22                      And you have the issue with that  
23       raised, whatever that is, that raised  
24       concrete that the other properties don't  
25       have to deal with.

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1                   And then, in conjunction to where  
2           the parking garage lies in regards to where  
3           those posts would be, I don't see how he can  
4           do this without taking down the front of the  
5           porch, which is something that I would find  
6           to be -- take off the front porch, which is  
7           aesthetically right if you inherited it that  
8           way -- and I think that would not be  
9           reasonable.

10                   So, with that, I can move that we  
11           grant the relief requested by this  
12           Applicant.

13                   VICE CHAIR ALLEN:       And I'll  
14           second.

15                   That's why he's the Chair.

16                   CHAIRPERSON JORDAN:    The motion  
17           is made.

18                   Does anyone second, or any other  
19           discussion?

20                   MEMBER MILLER:       I would just  
21           agree with your analysis. I think there's a  
22           confluence of factors as to this uniqueness  
23           and exceptional difficulty.

24                   (Laughter.)

25                   CHAIRPERSON JORDAN:    All right.

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1 All those in favor of the motion,  
2 signify by saying aye.

3 (Chorus of ayes.)

4 CHAIRPERSON JORDAN: Those  
5 opposed, nay.

6 (No response.)

7 CHAIRPERSON JORDAN: And the  
8 motion carries.

9 I believe we can be safe to have  
10 a summary order, please.

11 MR. MOY: Yes, sir.

12 I would state for the record that  
13 on a vote of 3-0, a motion of Chairman  
14 Jordan to approve the application as unique  
15 was requested, the motion was seconded by  
16 Vice Chairperson Allen, and also Mr. Rob  
17 Miller.

18 We have a seat vacant, and a  
19 member not participating.

20 CHAIRPERSON JORDAN: Thank you.

21 Before we call the next case,  
22 we're going to take a five-minute break.

23 (Whereupon, a recess was taken at  
24 10:50 a.m.)

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1                   (Whereupon,           the           hearing  
2 reconvened at 10:55 a.m.)

3                   BZA APPLICATION 18651

4                   PETER J. FITZGERALD

5                   CHAIRPERSON JORDAN:   Okay.

6                   Mr. Moy?

7                   MR. MOY:   Yes, sir.

8                   The last application on today's  
9 docket is Application 18651, of Peter J.  
10 FitzGerald.       This application is for  
11 numerous variance relief, which I won't  
12 recite.

13                  I would like to add, Mr.  
14 Chairman, that there is a -- ah, yes --  
15 preliminary matter here, with a request for  
16 a stay submitted by Michael Kim of Grubb's  
17 Care Pharmacy, matching your case folders  
18 under Exhibit 44.

19                  CHAIRPERSON JORDAN:   Okay.

20                  Would you please make sure your  
21 microphone is turned on with the bright  
22 green glow.

23                  And please introduce yourselves,  
24 starting left to right, please.

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1                   MR. FITZGERALD: John FitzGerald,  
2                   agent for the owner.

3                   MR. BROWN: Patrick Brown,  
4                   Greenstein, DeLorme & Luchs, on behalf of  
5                   the Applicant.

6                   MR. HOLLIS: John Hollis, a  
7                   resident at 325 and 327 A Street.

8                   MS. SCHMIDT: Janet Louise  
9                   Schmidt, owner of 14 Fourth Street,  
10                  Northeast.

11                  And next to me -- he will  
12                  introduce himself -- is the representative  
13                  for Grubb's pharmacy.

14                  MR. BREW: Hello, Tom Brew,  
15                  Grubb's Pharmacy, representing Doctor  
16                  Michael Kim, 326 East Capitol Street.

17                  MR. BROWN: Mr. Chairman, we  
18                  neglected to introduce one other.

19                  CHAIRPERSON JORDAN: He's going  
20                  to speak in terms of support.

21                  MR. BROWN: Yes, but we're, we  
22                  are planning to call him as a witness.

23                  CHAIRPERSON JORDAN: Okay.  
24                  That's fine, yes.

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1                   MR. BROWN: Mr. Eisenberg, please  
2                   introduce yourself.

3                   MR. EISENBERG: Elliot Eisenberg,  
4                   at 321 E Street, the property immediately  
5                   adjacent to the proposed construction  
6                   project.

7                   CHAIRPERSON JORDAN: The Board  
8                   has a motion to stay the proceedings, filed  
9                   by Dr. Kim and Grubb's Pharmacy, which will  
10                  not be entertained; in fact, it will be  
11                  denied.

12                  Mr. Kim and Grubb's Pharmacy are  
13                  not parties to this litigation. Therefore,  
14                  they have no standing to make this motion.  
15                  Plus, even if we did, it was not substantive  
16                  enough to be recalled within Zoning's  
17                  purview.

18                  So we deny the motion to stay.

19                  Board, does anyone want to object  
20                  to that?

21                  MR. BREW: May I ask a question?

22                  CHAIRPERSON JORDAN: No, you  
23                  cannot.

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1                   Let's move into where we are with  
2                   this matter.   We have two party statuses  
3                   that are pending, that we've consolidated.

4                   And I understand, Ms. Schmidt,  
5                   you are going to be the spokesperson for the  
6                   party status; correct?

7                   MS. SCHMIDT:   Yes, and I, I just  
8                   would like to clarify something because I  
9                   think it might streamline this.

10                  There are various witnesses who  
11                  would have testimony that's cumulative in  
12                  nature, so I plan to just make some basic  
13                  legal arguments regarding the application,  
14                  so that you would hear those witnesses and  
15                  not conclude that their testimony is  
16                  cumulative.

17                  CHAIRPERSON JORDAN:   Okay, and we  
18                  do allow people to speak with limitations on  
19                  their time.   So they have the right to do  
20                  so, and you to limit yourself.

21                  MS. SCHMIDT:   Yes.

22                  CHAIRPERSON JORDAN:   The other  
23                  thing that we are being very conscious of,  
24                  and we've been saying to counsel, counsel  
25                  needs to be really careful about the

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1 statements that they're making, whether or  
2 not they're making arguments or trying to  
3 present before this Board facts, because,  
4 then, you're crossing some lines. And we're  
5 learning there are some things that are  
6 becoming very crossed in that regard.

7 So I just want to put back into  
8 the record.

9 MALE SPEAKER: (Off mic.) Mr.  
10 Chairman, I'm sorry; I couldn't hear a word  
11 you just said.

12 CHAIRPERSON JORDAN: I said,  
13 those people who want to speak in support or  
14 opposition, everybody has a right to do so,  
15 and they have three minutes to do that. So  
16 there's no real imitation in that regard.  
17 The Board is here to hear that.

18 The other thing I said with  
19 regards to counsel who represent parties in  
20 this matter is that they have to be careful  
21 about what they're talking about -- argument  
22 versus fact -- because the Board will accept  
23 those things being said counsel not as  
24 factual but as argument.

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1 MS. SCHMIDT: And if you may --  
2 if I may -- I just want to put on the  
3 record, when you talk about counsel, I am  
4 licensed in Virginia. I am not licensed in  
5 DC.

6 CHAIRPERSON JORDAN: Okay.

7 MS. SCHMIDT: Thank you.

8 CHAIRPERSON JORDAN: Thank you  
9 for that.

10 Mr. Brown, how long do you think  
11 you're going to take to present your case?

12 MR. BROWN: Probably a little  
13 more than a half-hour, so within the one-  
14 hour time frame.

15 CHAIRPERSON JORDAN: Ms. Schmidt,  
16 how much time do you think you'll need?

17 MS. SCHMIDT: I'm going to, I'm  
18 going to --

19 CHAIRPERSON JORDAN: With the  
20 exclusion of the other people who are making  
21 statements?

22 MS. SCHMIDT: I'm going to try  
23 and constrain it to 15 minutes.

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1                   But Your Honor -- oh, excuse me;  
2       I appear in court normally, so I'm sorry --  
3       Mr. Chairman.

4                   CHAIRPERSON JORDAN:       You know  
5       what? I'm starting to feel that a lot now.

6                   (Laughter.)

7                   MS. SCHMIDT:    Mr. Chairman, I'd  
8       like to be heard preliminarily on important  
9       procedural    and   possibly   jurisdictional  
10      matter.

11                  CHAIRPERSON JORDAN:   Okay, let me  
12      then say this:   We're not going very much  
13      over -- we, as you know, read these briefs  
14      and go through these things over and over  
15      again.

16                  We'll set 40 minutes.   Each party  
17      will   have   40   minutes   to   do   their  
18      presentation.    I think that's more than  
19      enough.   You don't have to use every minute  
20      of it.   You can stop short.   Sometimes, if  
21      you use more than enough, you're get  
22      yourselves in trouble.

23                  Okay?

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1 MS. SCHMIDT: I just wanted to  
2 bring to the attention, if you might, Mr.  
3 Jordan --

4 CHAIRPERSON JORDAN: Yes. Yes.

5 MS. SCHMIDT: -- that there is a  
6 question, and it was raised in early  
7 neighborhood meetings, about whether or not  
8 the parties for Mr. FitzGerald are properly  
9 before the BZA.

10 And if I may show you an exhibit  
11 --

12 CHAIRPERSON JORDAN: Just make  
13 sure you stay on the microphone when you're  
14 talking. Just let me know.

15 So are you making a motion, or  
16 are you making an objection to the  
17 testimony? What are you doing?

18 MS. SCHMIDT: I'm making a  
19 preliminary motion to dismiss, or in the  
20 alternative, to stay until there's a proper  
21 authority.

22 This is the letter of  
23 authorization, and this would be the BZA  
24 rule. This was brought to attention by

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1 neighbors at early meetings, that Mr.  
2 FitzGerald --

3 CHAIRPERSON JORDAN: Well, you  
4 need to identify what -- and you need the  
5 hand microphone if you're going to stand.

6 There's a hand microphone if you  
7 wish.

8 What's the exhibit on the  
9 authorization?

10 MS. SCHMIDT: Let's mark that as  
11 Exhibit A for --

12 CHAIRPERSON JORDAN: No, no, no.  
13 I'm speaking to staff.

14 What's already been filed in the  
15 exhibit record book?

16 MR. VARGA: One moment, Mr.  
17 Chair.

18 CHAIRPERSON JORDAN: Mr. Brown,  
19 do you know the exhibit number that's in --

20 MR. VARGA: Yes, the  
21 authorization letter is in Exhibit 6.

22 CHAIRPERSON JORDAN: Exhibit 6.

23 And so the authorization is what  
24 you're telling me --

25 MS. SCHMIDT: Yes.

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1                   CHAIRPERSON JORDAN:     Give us a  
2     moment to pull that up.

3                   MS. SCHMIDT:     And I have it here  
4     on a board here, as well.

5                   CHAIRPERSON JORDAN:     Some of our  
6     sight is not like it used to be, so we need  
7     to get a little bit closer to us.

8                   MS. SCHMIDT:     You only have to  
9     hit 40 to have that happen.

10                  (Whereupon, there was a long  
11     pause on the record while the Board reviewed  
12     the document.)

13                  CHAIRPERSON JORDAN:     Okay.

14                  Let's hear, let's hear your --  
15     thank you.

16                  MS. SCHMIDT:     Your rule -- excuse  
17     me; I guess Kinko's cut part of it off, so I  
18     don't know the whole rule number -- but it  
19     states, the rule regarding appearance and  
20     representation states that the authorization  
21     must contain express language giving the  
22     representative the authority to bind.

23                  And this was raised at  
24     neighborhood meetings, and we were told that  
25     this was all we were going to get, was the

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1 exhibit that you've previously referenced as  
2 to the authorization.

3 CHAIRPERSON JORDAN: And what's  
4 your question?

5 MS. SCHMIDT: We move to dismiss.

6 CHAIRPERSON JORDAN: On what  
7 grounds?

8 MS. SCHMIDT: On the grounds that  
9 Mr. FitzGerald's son does not have the  
10 authority to bind with regard to proposals  
11 they've made before the BZA --

12 CHAIRPERSON JORDAN: And where do  
13 you deduce that?

14 MS. SCHMIDT: By virtue of the  
15 absence of the language that would giving  
16 him the power to bind.

17 CHAIRPERSON JORDAN: This clearly  
18 says that he's granted the authorization.

19 I'm not trying to make your  
20 argument for you, Mr. Brown, but I don't --

21 Overruled. Let's move on.

22 MS. SCHMIDT: Okay.

23 And then the --

24 CHAIRPERSON JORDAN: And for the  
25 record, I'll indicate that the

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1 authorization, Exhibit 6, clearly says that  
2 Mr. FitzGerald has the representation in all  
3 proceedings with the Board of Zoning  
4 Adjustment regarding this property. I think  
5 that's sufficient enough.

6 MS. SCHMIDT: Then the second  
7 matter I would like to raise is regarding  
8 the titled owner of the property.

9 The actual titled owner of the  
10 property -- I have the real estate deed --  
11 is a trust created a trust created under the  
12 Joseph FitzGerald will. It's a testamentary  
13 trust, and I have a copy of the will  
14 probated in Virginia.

15 I can provide you with the deed.

16 We have an improper party making  
17 this application.

18 CHAIRPERSON JORDAN: Okay.

19 If you would, present to us,  
20 please.

21 MS. SCHMIDT: Yes; thank you.

22 (Whereupon, Counsel proffered the  
23 document to the Board.)

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1 MS. SCHMIDT: Give me a moment.  
2 I've hit that age where it takes me a while  
3 to read.

4 CHAIRPERSON JORDAN: Please make  
5 sure Mr. Brown has --

6 MR. BROWN: Mr. Chairman, I  
7 haven't seen any of this. I'm --

8 CHAIRPERSON JORDAN: I  
9 understand. I understand.

10 MR. BROWN: Well, and also, in  
11 the same context, I was just handed a  
12 separate document, I believe, by Ms.  
13 Schmidt, a motion to dismiss or, in the  
14 alternative, stay the above-styled  
15 application, which -- I don't even know if  
16 it's on the record yet, but I --

17 CHAIRPERSON JORDAN: I don't have  
18 it.

19 Let me say this before  
20 editorializing. This is something we've  
21 talked about over and over again, and it was  
22 one of my comments in regards to the zoning  
23 rewrite, that when a person is in party  
24 status, we don't have, necessarily, a  
25 requirement until they are granted party

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1 status that makes them a party to the  
2 guidelines and time frames in which they  
3 should submit to this board certain  
4 documents that are applicable. And there's  
5 a lot of times when something like this  
6 happens, and so the Applicant is blindsided.

7 So what I was talking about, in  
8 front of the Zoning Commission on the zoning  
9 rewrite is that there should be some type of  
10 requirement, also, on the people seeking  
11 party status, whatever way it's going to  
12 happen.

13 We have noted it as an issue, Mr.  
14 Brown, but right now, there is nothing that  
15 presents the presentation of these  
16 documents, and that's the way, procedurally,  
17 the Board has been doing it.

18 MR. BROWN: And I understand  
19 that, and your points are well taken.

20 But I am at a loss to -- both  
21 with respect to these issues that are being  
22 raised now, and the ones that are being  
23 raised here -- I am at a loss --

24 CHAIRPERSON JORDAN: I haven't  
25 seen those yet, but --

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1 MR. BROWN: Yeah, well, we're all  
2 at a loss to deal with them because we  
3 haven't seen them either.

4 CHAIRPERSON JORDAN: Well, let's  
5 deal with them issue by issue, and then we  
6 can come back to you, if we may, please.

7 MS. SCHMIDT: Yes.

8 Let the record reflect that I'm  
9 handing Mr. Brown a copy of --

10 CHAIRPERSON JORDAN: I'm sorry,  
11 ma'am; instead of -- you're moving to  
12 dismiss based upon improper party?

13 MS. SCHMIDT: Yes, the, the  
14 application itself is a legal nullity in  
15 that it was not signed by the owner of  
16 record of the property.

17 CHAIRPERSON JORDAN: Got you.

18 MS. SCHMIDT: It's owned by a  
19 trust created under, a testamentary trust  
20 which becomes irrevocable on death.

21 I speak as an officer of --

22 CHAIRPERSON JORDAN: You know,  
23 what's going to be very helpful for us?

24 MS. SCHMIDT: Yes?

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1                   CHAIRPERSON JORDAN:    If we have  
2    it in our hands --  
3                   MS. SCHMIDT:    I -- I'm (off-mic).  
4    Will I take this and submit it?  
5                   CHAIRPERSON JORDAN:    Yes, please,  
6    or --  
7                   Mr. Moy, you can go do what you  
8    need to do.  
9                   He's on special assignment for  
10   today.  
11                  MS. SCHMIDT:    I need a speaker to  
12   speak into.  
13                  CHAIRPERSON JORDAN:    No, there's  
14   a hand microphone he gave you before.  
15                  MR. BROWN:    Ron is the trustee?  
16                  MR. FITZGERALD:   Um-hmm.   He has  
17   a life estate in the trust.  
18                  CHAIRPERSON JORDAN:    Okay.  
19                  MS. SCHMIDT:    And I'd like to  
20   submit a copy of the will obtained from  
21   Fairfax County, which sets forth the  
22   testamentary trust being established.  
23                  (Whereupon, the parties engaged  
24   in off-mic discussion on the record.)

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1                   CHAIRPERSON   JORDAN:       Is    it  
2   different?

3                   Did     you     provide     copies,  
4   sufficient copies, for the Board?

5                   MS. SCHMIDT:   I have, I have -- I  
6   made you 13 copies.    If you need more  
7   copies, I can --

8                   CHAIRPERSON   JORDAN:       Okay.    I  
9   have two documents that appear to be the  
10   same.   They may be different documents.   I  
11   don't know, though.

12                  MS. SCHMIDT:   This one here is  
13   with regard to lot -- excuse me -- square 76  
14   --

15                  CHAIRPERSON   JORDAN:       Okay, this  
16   is what we're going to do.   So we can have  
17   identification for -- pending identification  
18   for acceptance in this record, I'm going to  
19   call this Exhibit A.   And this one that's  
20   identified as Exhibit A is the one that --

21                  Would you, for the record, tell  
22   us what that is?

23                  MS. SCHMIDT:   It is a deed from  
24   the estate of Joseph FitzGerald.

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1 CHAIRPERSON JORDAN: Is it dated?  
2 I just need you to identify the date.

3 MS. SCHMIDT: It has a date --

4 CHAIRPERSON JORDAN: I think it's  
5 at the top.

6 MS. SCHMIDT: No, all I can see  
7 is a notarized date of 8/31/98, but both --

8 CHAIRPERSON JORDAN: If I may,  
9 let me do this. It's a document we'll call  
10 Exhibit A. It's a deed dated June 19, 1995.

11 (Whereupon, Exhibit A was marked  
12 for identification.)

13 CHAIRPERSON JORDAN: That's --

14 MS. SCHMIDT: That -- yes.

15 CHAIRPERSON JORDAN: Okay, and --

16 MS. SCHMIDT: And as for Lot 827.

17 And the next one is --

18 CHAIRPERSON JORDAN: Which we'll  
19 mark as Exhibit B. It is a deed dated  
20 August 5, 1992.

21 (Whereupon, Exhibit B was marked  
22 for identification.)

23 MS. SCHMIDT: And that is for  
24 what is the historic stable, or what they  
25 call the "garage," a single lot item.

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1                   CHAIRPERSON JORDAN:     Is there  
2 something else you're proffering here?

3                   MS. SCHMIDT:   Yes, a copy of the  
4 will which creates the irrevocable trust.

5                   CHAIRPERSON JORDAN:   We're going  
6 to make that Exhibit C.

7                   MS. SCHMIDT:   And that's under  
8 the ninth provision.

9                   CHAIRPERSON JORDAN:   It's a will  
10 dated -- excuse me; not dated -- issued book  
11 and page 313, page 279.

12                   (Whereupon, Exhibit C was marked  
13 for identification.)

14                   CHAIRPERSON JORDAN:   So, do we  
15 have sufficient copies for all three of  
16 these?

17                   MS. SCHMIDT:   I have it. But if  
18 you will give me a moment, I will get them  
19 all to you at the end if there are  
20 sufficient copies.

21                   CHAIRPERSON JORDAN:   No, we're  
22 not going to do it before the end. We're  
23 going to do it before we proceed --

24                   MS. SCHMIDT:   Okay.

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1 CHAIRPERSON JORDAN: -- because I  
2 want this Board to stay abreast --

3 MS. SCHMIDT: Oh, sure.

4 CHAIRPERSON JORDAN: -- as well  
5 as counsel to stay abreast, of the issues  
6 that are being raised.

7 MS. SCHMIDT: I have provided  
8 counsel with a copy of the will. I believe  
9 that's the submission number of copies.

10 CHAIRPERSON JORDAN: Do you have  
11 what I've called Exhibits A, B, and C, Mr.  
12 Brown?

13 MR. BROWN: I have B and C, but  
14 not A.

15 MS. SCHMIDT: I'm sorry; here's -  
16 - let me take that back.

17 CHAIRPERSON JORDAN: All right.  
18 Mark those -- those are what is  
19 marked as B.

20 If you can just give those to us  
21 -- yes.

22 MR. BROWN: I have, I have the  
23 will.

24 MS. SCHMIDT: You have both of  
25 these, as well.

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1 CHAIRPERSON JORDAN: Mr. Brown,  
2 are you following along with that?  
3 MR. BROWN: Whatever A is, I  
4 don't have.  
5 MS. SCHMIDT: Let me give you --  
6 MR. BROWN: Is this a separate  
7 document?  
8 MS. SCHMIDT: Yes. There's two  
9 different dates.  
10 MR. BROWN: All right.  
11 Hold on.  
12 (Whereupon, the parties engaged  
13 in off mic discussion on the record.)  
14 CHAIRPERSON JORDAN: All right,  
15 let's do B.  
16 No. He's bringing them out now.  
17 B? Do we have B yet?  
18 (No response.)  
19 CHAIRPERSON JORDAN: Do we have  
20 a?  
21 MS. SCHMIDT: Oh, you want more  
22 copies. Just a moment.  
23 CHAIRPERSON JORDAN: I have to  
24 have sufficient copies of every document for  
25 the Board.

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1                   The rule requires at least --  
2           what? 10 copies; right?

3                   But we need this to get through  
4           us this because counsel to the Board needs  
5           it, the Office of Planning needs it, and any  
6           other party to this proceeding actually  
7           should have it.

8                   MS. SCHMIDT: I'm so sorry, Mr.  
9           Chairman if you'd just give me a moment  
10          here.

11                   (Whereupon the parties engaged in  
12          off-mic discussion on the record.)

13                   CHAIRPERSON JORDAN: Counsel made  
14          a good suggestion. Maybe we'll don't have  
15          to go through all this.

16                   Mr. Brown, who is the owner of  
17          the property?

18                   MR. BROWN: What?

19                   CHAIRPERSON JORDAN: Is the  
20          Applicant the owner of the property?

21                   MR. BROWN: Peter J. FitzGerald.

22                   CHAIRPERSON JORDAN: Is the owner  
23          of the property.

24                   MR. BROWN: In, in his personal  
25          and trustee capacity. He has a, a --

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1                   CHAIRPERSON JORDAN:       Okay, so  
2       that's the issue that the opposition has  
3       submitted, is putting before us, that that's  
4       not correct. So we need to still drill into  
5       this, okay.

6                   MR. BROWN:       Well, Mr. Chairman,  
7       in both the deeds, they have Peter J., Peter  
8       Jerry FitzGerald, personal representative of  
9       his, his father, Joseph FitzGerald, Jr.,  
10      transferring the property on behalf of the  
11      estate to Peter J. FitzGerald as trustee  
12      under the will, which establishes -- in both  
13      cases, for both properties, Mr. FitzGerald -  
14      - Peter J. FitzGerald, John FitzGerald's  
15      father -- as the party with ownership and  
16      control of the property.

17                  Peter J. FitzGerald, as we've  
18      already established, has authorized his son,  
19      John H. FitzGerald, who is here with us  
20      today, to act on his behalf on this matter,  
21      and we're, I think we're running down a  
22      blind alley here.

23                  MS. SCHMIDT:       I'd like an  
24      opportunity to respond.

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1                   As a wills and trusts lawyer with  
2           25 years and an LLM in estate planning, a  
3           trustee -- he is, he was, at least at the  
4           time of --

5                   CHAIRPERSON JORDAN:   Look, folks,  
6           let me control this hearing.

7                   MS. SCHMIDT:   Sorry.

8                   CHAIRPERSON JORDAN:   We're not  
9           going to have you just talking out.   I  
10          didn't ask for any response back at this  
11          point.

12                   Let me just --

13                   MS. SCHMIDT:   I did I apologize.  
14          I'm sorry.

15                   CHAIRPERSON JORDAN:   My question  
16          was just to Mr. Brown.   I learned something  
17          very straightforward, and now I'm trying to  
18          decide how we will proceed.   So just give it  
19          a second, please.

20                   (Whereupon,   the   Board   reviewed  
21          the exhibits.)

22                   CHAIRPERSON JORDAN:   All right.  
23          Okay, I understand your discussion is that  
24          the --

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1                   Mr. Brown, you're saying that --  
2           you guys are giving me a headache -- Peter  
3           Jerry FitzGerald is the personal  
4           representative and also the trustee. The  
5           property is still in the name of the estate  
6           and the trust.

7                   Is this still pending? Is this  
8           probate still pending?

9                   MS. SCHMIDT: I can speak to that  
10          if you'll --

11                  CHAIRPERSON JORDAN: I didn't ask  
12          you.

13                  MS. SCHMIDT: Okay.

14                  CHAIRPERSON JORDAN: Is this  
15          property, is this probate, still pending?

16                  MR. BROWN: I am told, no.

17                  CHAIRPERSON JORDAN: All right.  
18          Now, if you would.

19                  MS. SCHMIDT: I've, I've reviewed  
20          the entire file in the Fairfax County court.

21                  Mr. FitzGerald stopped responding  
22          to the Virginia Commissioner of Accounts  
23          regarding the trust many years ago -- I  
24          think it was 2002- 2003 time period -- and  
25          they close the file.

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1                   He stopped providing accounting  
2           and --

3                   CHAIRPERSON JORDAN:    Please, Ms.  
4           Schmidt.

5                   MS. SCHMIDT:    I'm sorry.

6                   CHAIRPERSON JORDAN:    I need to  
7           know, is this --

8                   MS. SCHMIDT:    The estate was  
9           closed by the Commissioner of Accounts by  
10          virtue of nonresponse from the personal  
11          representative at the time, who was Peter  
12          FitzGerald.

13                   CHAIRPERSON JORDAN:   All right.  
14                   Has there been a distribution,  
15          Mr. Brown, of the estate to Peter Jerry  
16          FitzGerald?

17                   MR.     BROWN:           Peter     Jerry  
18          FitzGerald has a life estate in this trust.  
19          He can do so as he pleases with the property  
20          throughout his lifetime.

21                   CHAIRPERSON JORDAN:   All right,  
22          here -- okay.

23                   I'm not trying to be really  
24          technical here, but this is straight, basic  
25          -- we have deeds executed for the personal

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1 representative of the estate. The estate  
2 takes on its own identity outside of Peter  
3 FitzGerald; right?

4 If that estate is still pending  
5 and has not been distributed to Peter  
6 FitzGerald, then his life estate has not yet  
7 been granted. I'm just trying to find out.

8 We're and all this stuff in  
9 advance. We're going to move on with this  
10 hearing, and we're going to come back and  
11 have you guys brief us left and right.  
12 That's, I think, how we're going to conclude  
13 this, because we don't have all the pieces  
14 in place right now, nor are we well-versed  
15 enough in the law on this.

16 We will take this objection under  
17 advisement. I'm going to subsequently ask  
18 parties to brief the Board regarding  
19 ownership of the property. We're not going  
20 to resolve it here. So we'll take that  
21 motion to dismiss in abeyance, and I want  
22 counsel to brief us on the issue and  
23 validate where we are.

24 Do you have another matter?

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1                   MS. SCHMIDT:     I just want to  
2     provide the extra copies of the deeds that  
3     you had asked for.

4                   CHAIRPERSON     JORDAN:            Okay,  
5     please.                         (Whereupon,           counsel  
6     proffered exhibit copies to the Board.)

7                   CHAIRPERSON     JORDAN:            Now, Ms.  
8     Schmidt, I think you indicated there was a  
9     second motion before us.

10                  MS. SCHMIDT:    Yes. This morning,  
11     we filed, the neighbors who have signed on  
12     have filed a motion to dismiss or, in the  
13     alternative, to stay the above-styled  
14     application. It has been signed by parties  
15     --

16                  CHAIRPERSON     JORDAN:     I have not  
17     seen a motion filed by any other --

18                  MS. SCHMIDT:    The --

19                  CHAIRPERSON     JORDAN:            -- other  
20     than what we have by Mr. Kim of Grubb's  
21     Pharmacy.

22                  MS. SCHMIDT:    It was brought this  
23     morning, and I understand that my helper --

24                  CHAIRPERSON     JORDAN:            At such a  
25     late date, it would be required that that be

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1 submitted to the Board for us to process it  
2 here, and whether or not we have granted  
3 leave to do so.

4 MS. SCHMIDT: Well, I asked for  
5 leave, and it was provided to Mr. Moy, I  
6 understand, about a half-hour or 45 minutes  
7 ago.

8 CHAIRPERSON JORDAN: Do you have  
9 -- let me see your copy.

10 MS. SCHMIDT: I have one copy  
11 left, but we've brought tons of these.

12 CHAIRPERSON JORDAN: When you  
13 file motions and documents here, we require  
14 more than one document to be submitted.

15 MS. SCHMIDT: (Off mic.)

16 CHAIRPERSON JORDAN: These  
17 should be in a set.

18 MS. SCHMIDT: Yes.

19 CHAIRPERSON JORDAN: Okay.

20 Mr. Moy, do you have a set that  
21 was submitted to you, of this?

22 MR. MOY: (Off mic.)

23 CHAIRPERSON JORDAN: Okay.

24 He'll pass it to us. Thank you.

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1                   If we were getting paid big  
2 bucks, I guess that's what this would have  
3 been paid for.

4                   (Whereupon, the Board reviewed  
5 the documents.)

6                   CHAIRPERSON JORDAN: What's the  
7 basis of this dismissal? Because, from what  
8 I've seen, it doesn't establish any grounds  
9 for dismissal.

10                  MS. SCHMIDT: Some, other than  
11 the ones that were verbally presented this  
12 morning regarding the ownership of the  
13 property and what you did not entertain with  
14 regard to Peter FitzGerald's son here having  
15 the power to bind, we're asking for  
16 dismissal or, or for a stay, the stay we're  
17 asking for, so that there can be some  
18 reconsideration of some issues that came to  
19 light during neighborhood meetings.

20                  Specifically, during neighborhood  
21 meetings in the last three weeks, it was  
22 revealed for the first time that the plan  
23 that was a review by the ANC did not  
24 disclose the FitzGeralds' plan to put a gas

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1 meter in the alley, that will block Doctor  
2 and Mrs. Perez is entrance to one garage.

3 There was also, the neighbors are  
4 asking for a stay so this can be reviewed by  
5 the Department of Sanitation because there  
6 are zero setbacks, hundred-percent lot  
7 coverage being requested, and there is a  
8 problem getting through the alley as it is  
9 now by garbage cans floating all over. And  
10 with no green space, hundred-percent lot  
11 coverage, there's no place for those garbage  
12 cans to go.

13 Also, with regard -- a stay so  
14 that the Board could ask the Department of  
15 Transportation to look into what kind of  
16 parking this will create.

17 If you will give me a moment, I  
18 have --

19 CHAIRPERSON JORDAN: No.

20 MS. SCHMIDT: I'd like --

21 CHAIRPERSON JORDAN: Let me say  
22 this: tell me what your motion's about.  
23 I've heard three issues that you've raised.

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1 MS. SCHMIDT: Since you've  
2 decided not to dismiss it based on the  
3 grounds that were verbally articulated --

4 CHAIRPERSON JORDAN: And so far,  
5 the things that you're eliciting as a reason  
6 for as a stay are not going to be granted  
7 because it's not within the purview of this  
8 Board to do. Plus, during the process,  
9 those things that are zoning-related will be  
10 discussed during the hearing, and you have a  
11 right to challenge it, or not.

12 MS. SCHMIDT: We would ask that  
13 this at least be entered into the record and  
14 taken as an opposition, as it has been  
15 signed by all the matters neighbors,  
16 adopting and ratifying the opposition  
17 originally filed by Mr. Stansbury's lawyer.  
18 So we would be --

19 CHAIRPERSON JORDAN: Absolutely  
20 not. Mr. Stansbury withdrew his party  
21 status request in this matter.

22 MS. SCHMIDT: That's -- yes. And  
23 what we did, in response to that -- we  
24 learned of that at about seven this morning.

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1                   What we have done is we've asked  
2     to join, adopt, and ratify, and then we,  
3     when we learned of that, we added the  
4     language, "Mr. Stansbury's opposition is  
5     attached hereto as Exhibit A."

6                   And we are asking to be able to  
7     adopt that statement, his opposition, as  
8     though it is our own.

9                   CHAIRPERSON JORDAN: Okay, you're  
10    asking that we take the motion prepared by  
11    Mr. Stansbury and Mr. Stansbury's counsel as  
12    one that you support, and that you're now  
13    requesting the Board to accept on behalf of  
14    the party in opposition, the Hollis-Schmidt  
15    opposition. Is that correct?

16                  MS. SCHMIDT: Yes.

17                  CHAIRPERSON JORDAN: Okay, we  
18    will do so. We receive it, accept it, and  
19    deny it. And let's move on to the hearing.

20                  We've set 40 minutes per party on  
21    this.

22                  And we will turn now to Mr. Brown  
23    to present us --

24                  MR. BROWN: Mr. Chairman, before  
25    we start, just some housekeeping so --

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1 CHAIRPERSON JORDAN: Oh, no more  
2 motions -- no.

3 (Laughter.)

4 CHAIRPERSON JORDAN: What?

5 SPEAKER: No, no -- just  
6 housekeeping to make sure because I provided  
7 some information for the convenience of the  
8 Board, and things have been filed this  
9 morning. I want to make sure that you have  
10 it all.

11 You obviously have received the  
12 letter withdrawing Mr. Stansbury's  
13 opposition. I've also submitted,  
14 this morning, a development and construction  
15 management agreement --

16 CHAIRPERSON JORDAN: Which is not  
17 going to be accepted into the record. You  
18 can proffer it at some point during your  
19 presentation, but I'm telling you, on its  
20 face, it's not going to be accepted into the  
21 record because it's not germane to zoning.

22 Go ahead.

23 MR. BROWN: But I, I've submitted  
24 it in the record --

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1                   CHAIRPERSON JORDAN:     Yes; we've  
2     seen it.

3                   SPEAKER:       --   signed by the  
4     property owner, and also Mr. Eisenberg.

5                   CHAIRPERSON JORDAN:       You've  
6     proffered it, but it's not been accepted  
7     into the record.

8                   MR. BROWN:     I've also provided  
9     for your ease of use the, the PowerPoint  
10    presentations in paper form.

11                  CHAIRPERSON JORDAN:     The Board  
12    doesn't have it.

13                  Do you have it?

14                  SPEAKER:   (Off mic.)

15                  CHAIRPERSON JORDAN:   Yes, please.  
16                  Also, regarding -- well, that's  
17    okay.

18                  But that contract is not signed  
19    either.

20                  MR. BROWN:     The one I submitted  
21    this morning is signed by Mr. FitzGerald and  
22    Mr. Eisenberg as the, as the two parties who  
23    is signed on it.

24                  CHAIRPERSON JORDAN:   By there's  
25    listed several other names in there that --

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1                   MR. BROWN:       It was drafted to  
2       accommodate a larger group, but I'm only  
3       proffering at on the basis of an agreement  
4       between Mr. Eisenberg and the owner of the  
5       property, as well as, attached to that are  
6       the proper BZA conditions.

7                   I've also, I've also proffered to  
8       the Board a, a letter, October 23, 2013,  
9       from Acadia Remodeling & Construction having  
10      to do with renovations and repairs of the  
11      garages and artist's studio.

12                  That's -- yes.

13                  CHAIRPERSON JORDAN:   As you know,  
14      Mr. Brown, documents from parties should be  
15      submitted 14 days prior to the hearing --

16                  MR. BROWN:       And --

17                  CHAIRPERSON JORDAN:   -- because  
18      it was all riled up your.

19                  More importantly, the real reason  
20      is that the Board spends a lot of time prior  
21      to these hearings -- eight to 12 hours --  
22      going over these cases before we sit here  
23      today, and it's important that we have  
24      digested each and every document as we can.

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1       Then, sometimes, we get things here that we  
2       have not had the opportunity to digest.

3                   MR. BROWN:   Yes.

4                   CHAIRPERSON JORDAN:    So that's  
5       one of my concerns with what you're offering  
6       the Board. Whether or not the Board will  
7       accept these things --

8                   MR. BROWN:   Mr. FitzGerald -- and  
9       there's supporting testimony -- these  
10      documents were intended to be introduced and  
11      used in November when we were here first.  
12      And before that it could occur, a  
13      continuance was requested.

14                  CHAIRPERSON JORDAN:    I don't have  
15      this other document that you're talking  
16      about.                   MR. BROWN:    It's a, a  
17      letter from --

18                  CHAIRPERSON JORDAN:    No.    I'm  
19      talking about --

20                  MR. BROWN:    It's a letter from -  
21      -

22                  CHAIRPERSON JORDAN:    This --  
23      well, I need those things, so that we can  
24      look at them at some point.

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1 (Whereupon, the Board reviewed  
2 the documents.)

3 CHAIRPERSON JORDAN: You're going  
4 to offer this as part of your case; is that  
5 what you're saying?

6 MR. BROWN: Yes.

7 CHAIRPERSON JORDAN: All right.  
8 Then we'll get to it. We'll decide how  
9 we're going to handle it at that point.

10 Has Ms. Schmidt been given those  
11 documents?

12 MR. BROWN: I can provide her  
13 with copies now.

14 MR. BROWN: Ms. Schmidt, do you  
15 need a copy of the construction management  
16 agreement that was signed by Mr. FitzGerald  
17 and Mr. Eisenberg?

18 MS. SCHMIDT: No.

19 MR. BROWN: Okay, Mr. Chairman?

20 CHAIRPERSON JORDAN: Go ahead.

21 MR. BROWN: We'd like to move  
22 forward.

23 But before I turn it over to Mr.  
24 FitzGerald, I want to just remind the Board  
25 --

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1 CHAIRPERSON JORDAN: Are you  
2 making argument now?

3 Let's start the clock.

4 Opening Statement (Applicant)

5 MR. BROWN: -- how we got to  
6 today.

7 We were here in November at the  
8 Chair's suggestion. We went outside and  
9 discussed with the group that here today.  
10 We agreed to a continuance, and as a result  
11 of that continuance, we entered into a  
12 series of meetings and discussions about the  
13 project.

14 We, we met on three separate  
15 occasions. We produced a construction,  
16 development and construction management  
17 agreement and the draft conditions, which  
18 we've submitted to the record, both in a  
19 draft yesterday and as a, an executed  
20 document between Mr. Eisenberg and the  
21 property owner, and with the proffered  
22 conditions.

23 A great deal of time and good-  
24 faith effort was put forth by everybody  
25 involved, meeting on Sunday nights,

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1       evenings, and you'll see from the agreement,  
2       a rather detailed agreement for a single-  
3       family dwelling. So, from the point, it led  
4       us to where we are today.

5               We discussed some issues this  
6       morning but weren't able to solve them, at  
7       least in the context there. I think we may  
8       be able to, as part of moving forward,  
9       accommodate some of those concerns, based on  
10      going forward with the proposal that, that  
11      we have in this application.

12             With that, I would like Mr.  
13      FitzGerald to introduce himself and walk  
14      through the project quickly. And we have a  
15      PowerPoint, as well as hard copies.

16             Testimony by the Applicant

17             MR. FITZGERALD: My name is John  
18      H. FitzGerald. I'm the agent for the owner  
19      of Peter J. FitzGerald.

20             I'd like to start my presentation  
21      by just walking through the PowerPoint  
22      slides.

23             The property is located on  
24      Capitol Hill. The two garages that are in  
25      question are to the rear of the 319 A

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1 Street, Northeast, and also, one that's to  
2 the rear of 321 A Street, Northeast. You  
3 can see that in the extract of the zoning  
4 map, which is the first page of the slide.

5 As Mr. Brown indicated, we had  
6 three meetings with the neighbors to try to  
7 resolve issues that came up. Those were  
8 held on November 24, December 18, and  
9 January 16 of this year.

10 And we talked with the neighbors  
11 about a variety of different construction  
12 matters, which were held, which are in the  
13 proposed conditions. We talked about two  
14 different phases of the construction --

15 CHAIRPERSON JORDAN: Mr. Brown,  
16 as you know, construction is not within the  
17 purview of the zoning, so I'm going to ask  
18 you to hit the zoning issues, but not --

19 MR. FITZGERALD: I'll --

20 CHAIRPERSON JORDAN: I understand  
21 you had discussions with the neighbors,  
22 talked about construction issues, and  
23 cycling and scheduling and notice and all  
24 that.

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1                   But for this Board, before you  
2                   even get to the point of construction, you  
3                   have to try to get us to grant the relief  
4                   that you seek --

5                   MR. FITZGERALD: Absolutely.

6                   CHAIRPERSON JORDAN: -- and you  
7                   need to hit the test and show us why we  
8                   should grant that relief.

9                   MR. FITZGERALD: I appreciate  
10                  that.

11                  Let's move on, then, to the photo  
12                  section if we could, please.

13                  The property is located also to  
14                  the rear of a very large apartment building,  
15                  a six-story apartment building called the  
16                  John Jay, that casts a very large shadow on  
17                  the proposed dwelling unit, and also onto  
18                  the neighbors to the north of the project.  
19                  You can see also, that is clearly exhibited  
20                  in the aerial view from east side, as well.  
21                  The very large yellow building is the John  
22                  Jay apartment building.

23                  From the south, you can also see  
24                  the proposed property outline in orange, and

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1 again, the John Jay kind of towering over  
2 this project.

3 The same thing as shown from the  
4 aerial view from the west.

5 The next slide shows the front of  
6 319 A Street, Northeast. This is the  
7 property that we own. This is a three-unit  
8 apartment building that we've owned for an  
9 extended period of time. I'll discuss that  
10 a bit later.

11 The next slide shows the alley  
12 and the three-unit apartment building at 319  
13 A Street, and the alley that runs north-  
14 south from East Capitol Street to A Street,  
15 Northeast.

16 The next slide shows the corner  
17 of one of the garages. It shows a very  
18 small parking area that's to the rear of 319  
19 A Street that will remain. This area is  
20 used for parking right now, and also for  
21 trashcans from the property.

22 CHAIRPERSON JORDAN: You said  
23 that garage will remain.

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1                   MR. FITZGERALD: No, no. That's  
2       -- excuse me -- that's the property we're  
3       talking about.

4                   CHAIRPERSON JORDAN: Right, but  
5       you're proposing to put the single unit  
6       there.

7                   MR. FITZGERALD: To demolish.  
8       Yes, demolished; excuse me.

9                   The next slide shows a view from  
10       the south looking at the property. It shows  
11       the 30-foot wide alley called Miller's  
12       Court. It shows the, the two garages that  
13       are from different periods, that are not in  
14       very good condition. And I'll discuss that  
15       later.

16                   The next slide shows a utility  
17       pole, and also the no-parking that is in  
18       front of the garages.

19                   I, I'd also like to be very clear  
20       that the two garages, as long as we've owned  
21       it, which is been close to 50 years, at no  
22       time has there ever been vehicle parking.  
23       And I will discuss that further, and then a  
24       brief history of the garages.

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1                   And the next slide is the subject  
2                   property.    This is the east side of the  
3                   garage.    You can see, in the past -- and  
4                   this picture displays it -- there was a  
5                   planter that was installed by, I believe,  
6                   the neighbor; we had nothing to do with it.  
7                   This is actually very close to the location  
8                   of proposed utility meters.

9                   The planter that is there is much  
10                  larger than what the utility meters would  
11                  be.    I've also, in discussions with my  
12                  architect, have discussed the utility meters  
13                  actually being on the inside.

14                 CHAIRPERSON JORDAN:   The utility  
15                  meter is on the west side; correct?

16                 MR. FITZGERALD:    It would be on  
17                  the east side of the property.

18                 CHAIRPERSON JORDAN:    East side.

19                 MR. FITZGERALD:    Very close to  
20                  where these planters are.

21                 CHAIRPERSON JORDAN:    Okay.

22                 MR. FITZGERALD:    You can see in  
23                  the, just below the dialog box where these  
24                  planters are, the planter is.

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1                   The next slide shows the  
2 alleyway, looking at the property. It shows  
3 the 30-foot-wide width of the property -- of  
4 the alley; excuse me.

5                   The next slide shows the context  
6 of the property. I'll discuss this a little  
7 bit further as we get on in discussing the  
8 proposed house.

9                   We picked up on the architecture  
10 of the, the alley dwelling units that are to  
11 the west, where the vehicle is parked. We  
12 felt these represented the architecture and  
13 the style of Capitol Hill very well. We  
14 picked up on that and used that as a style  
15 point in our design.

16                   The, the next slide shows the  
17 various different views of the alley. It  
18 also has a very small site map that shows  
19 the property. This is an area where there's  
20 a very large parking area that is shown. It  
21 shows the alleys that run north-south and  
22 one that runs east, out to Fourth Street.

23                   If we can get into the  
24 architectural plans next, you can see  
25 another site map that shows the proposed

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1 project in the middle, labeled as "site."  
2 You can see the John Jay apartment building,  
3 which is close to 60 feet tall, directly to  
4 the south. The other thing it also  
5 shows is that, the heights of the  
6 surrounding properties. Three-Nineteen A  
7 Street is 40 feet. And then the property  
8 directly to the west on Miller's Court, the  
9 three carriage houses are about twenty and a  
10 half feet wide. We designed the house to be  
11 in context with these different heights.

12 The next slide shows the floor  
13 plans of the proposed alley dwelling unit.  
14 Working from right to left, you can see in  
15 the floor plan of the ground floor, there'd  
16 be an open living space with a kitchen that  
17 would be there, a half-bath, and then to the  
18 right would be a garage spot for a single-,  
19 a single-car garage. The mechanical room is  
20 also there. And then, directly, just to  
21 the, below the mechanical space, is a,  
22 storage place where the garbage cans for the  
23 property would be stored or put up.

24 The next slide shows the  
25 elevations. As I had mentioned earlier

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1 before, we tried to pick up on the context  
2 of the alley dwelling units directly to the  
3 west of the property. We worked very  
4 closely with Historic Preservation, both  
5 from the Capital Restoration Society and the  
6 District of Columbia to come up with the  
7 design. This was approved by Historic  
8 Preservation and by the Capital Restoration  
9 Society.

10 I enjoyed working very closely  
11 with Amanda Molson on this design and look  
12 forward to working with her in the future,  
13 as more details are ironed out.

14 The next slide shows the, a  
15 section of the property. It is, it shows  
16 the height of the proposed structure with a  
17 small parapet ball. It shows also the west  
18 elevation, which would be facing on the  
19 alley, with some windows both in the living  
20 room space and in the two bedrooms above.

21 If I can also draw your attention  
22 to the east elevation, Mr. Eisenberg, who  
23 lives at 221 A Street's, request, there are  
24 no windows that overlook into his garage.  
25 The only windows that are on this elevation

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1 look into the small parking space and patio  
2 to the rear of the property that we own at  
3 319 A Street, Northeast.

4 If we can turn our attention next  
5 to the shadow studies, you can see from  
6 these, there are shadows studies that were  
7 conducted during summer and winter. I think  
8 that these show that the, any kind of, of  
9 shadow that might be cast from the property  
10 is limited and negligible at best.

11 If we can return to --

12 CHAIRPERSON JORDAN: You know, I  
13 noticed the shadow studies from the  
14 apartment building didn't cast shadows into  
15 the property, the subject property.

16 MR. FITZGERALD: They do a bit.  
17 When, when the, the sun is to the south, it  
18 casts the shadows into the alley and the  
19 court, and to the properties particularly to  
20 the west of the proposed site.

21 If we could turn our attention to  
22 the next slide -- that's return on  
23 investment -- we do look at other  
24 alternatives to the single-family dwelling  
25 unit, and one of the alternatives was what

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1 looking at it as an artist's studio. The  
2 cost to renovate the existing structures  
3 would be in the magnitude of the \$315- and  
4 \$345,000. Rental income per month --

5 CHAIRPERSON JORDAN: Okay, the  
6 two artist studios. I've got it.

7 MR. FITZGERALD: And the rental  
8 income that could be derived, and this is,  
9 I've gotten from a real estate agent who is  
10 very familiar with Capital -- her name is  
11 Katie Kopp -- that the rental income, and  
12 this is based off of studio units that she  
13 owns and manages, would be around \$1,200 a  
14 month, or somewhere around \$14,500 a year.

15 The breaking period on this --  
16 point; excuse me -- would be over 21 and a  
17 half years. If you use a capitalization of  
18 seven percent, which is a, a very generous  
19 capitalization rate, given the revenue  
20 stream, it would come out to roughly, you  
21 know, \$208,000. You can see that this would  
22 not be a wise investment.

23 CHAIRPERSON JORDAN: That's a 70-  
24 percent return.

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1                   MR. FITZGERALD:    Seventy-percent  
2   capitalization rate.  If you take the income  
3   and you divide it by the capitalization  
4   rate, you, with the value.  This is a  
5   recognized method that's used frequently in  
6   deriving values of commercial property.

7                   CHAIRPERSON JORDAN:  But I asked,  
8   what was the return rate?

9                   MR. FITZGERALD:  I, I'd, I'd have  
10  to calculate it.

11                  The breaking, the return rate is,  
12  it's going to be much higher.  I don't know  
13  that off the top of my head.

14                  CHAIRPERSON JORDAN:  Okay.  I got  
15  you.

16                  MR. FITZGERALD:  Okay.

17                  CHAIRPERSON JORDAN:  But I do  
18  need the return rate.  So we can do it now  
19  or later, whatever.

20                  MR. FITZGERALD:  Okay.  I'd be  
21  happy to try to calculate that for you.

22                  The, the other alternative that  
23  we looked at was a single-car, two single-  
24  car garages.  The cost to renovate the unit,  
25  the garages, because of the deplorable state

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1       that they're in right now, would be in,  
2       close to \$110- to \$130,000.

3               Based off of comparable sales, we  
4       found that these would trade somewhere  
5       around \$33,000 each. The net loss on these  
6       would be in the magnitude of \$44- to  
7       \$64,000. This, again, too, would be a bad  
8       investment.

9               And you can see in the next  
10       slide, we came up, actually, with  
11       preliminary plans for two artist studios and  
12       looked at the feasibility of that, as well,  
13       too. We show what would be required to  
14       bring the structures up to standards so they  
15       could use those artist studios.

16              At this point, I would like very  
17       briefly discuss the history of the garages  
18       and give you a little bit of background.  
19       Lots 827 and Lot 22 of square 786 were  
20       purchased by my grandfather, Joseph  
21       FitzGerald, in the early 1960s from a  
22       plumbing contractor. And at that time, the  
23       three-story building between 319 A Street,  
24       Northeast, was used as an office and shop by  
25       the plumbing contractor, and the garages in

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1 the area were used to assemble and store  
2 plumbing supplies.

3 After the property was purchased,  
4 the three-story building was converted into  
5 a three-unit apartment building, with, with  
6 one unit on each floor. Extensive  
7 renovations were required to change it into  
8 residential use. These included installing  
9 for plumbing for bathrooms and kitchens on  
10 each floor, separate entrances to each  
11 apartment, and separate HVAC for each floor.  
12 In addition, walls were erected to delineate  
13 rooms, hallways, and closets.

14 At that time, a small patio was  
15 directed to the rear, with a fence  
16 surrounding it, and a small parking area was  
17 created between the patio and one of the  
18 garages.

19 CHAIRPERSON JORDAN: We can have  
20 a light back on because you're not using the  
21 --

22 Excuse me; just a second please.

23 Does that make it a little better  
24 for you to read?

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1                   MR. FITZGERALD:    Yes.    That --  
2   thank you; I appreciate that.

3                   The renovations were successful,  
4   and the apartment building has been used  
5   since they were laid out.

6                   In the last 10 years, all the  
7   apartments have been renovated again with  
8   the installation of kitchens, bathrooms, and  
9   HVAC.       In short, it's an attractive  
10   apartment building, and I think it's a nice  
11   addition to the neighborhood.

12                  When the garages were initially  
13   bought, they were used as a shop to  
14   construct kitchen cabinets for the  
15   properties that we own on Capitol Hill. In  
16   addition, we stored building materials in  
17   them, along with tools.

18                  In the 1970s, with the advent of  
19   stores like Hechinger's, and subsequently,  
20   Home Depot and Lowe's, it became more cost-  
21   effective to purchase premade cabinets and  
22   have building materials delivered to the job  
23   site when needed. Buying items in bulk from  
24   lumber yards stopped being cost-effective.  
25   So, at that time, we stopped making cabinets

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1 in the garages, and we stopped buying  
2 building materials in bulk and storing them  
3 in the garages.

4 During this time, also, several  
5 attempted break-ins occurred. Windows that  
6 were to be in the doors were broken, and the  
7 garage doors themselves were severely  
8 damaged. The windows were boarded, and  
9 several repairs were made to the doors to  
10 try to and keep them functional. But as we  
11 felt the structures were becoming less and  
12 less secure, fewer and fewer items were  
13 stored in them. In time, the garages became  
14 a place where construction debris from small  
15 renovation jobs was stored until it could be  
16 away to a landfill.

17 At present, the garages are in  
18 poor condition, due to their age and the  
19 effects of numerous attempted break-ins and  
20 vandalism. Both roofs leak, and there  
21 structural issues with the garage on Lot  
22 122. The concrete floor of the garage on  
23 Lot 827 is badly cracked, and only one  
24 garage door is operable. The garage on Lot  
25 122 only has a gravel floor, and there is no

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1 electricity or other utilities. There's  
2 very little left in the garages and their  
3 use -- and they are, for the most part,  
4 vacant.

5 What I propose to build is a two-  
6 story single, brick, single-family alley  
7 dwelling unit. When we first talked to,  
8 when we first started to design the house,  
9 we looked at other alley structures so the  
10 house would be keeping with those types  
11 structures. And specifically, we took many  
12 of the cues from the three alley dwellings  
13 units directly to the west of the site.

14 As you can see in the elevations,  
15 the façade has arched and corbel brickwork  
16 at the roof line. The house will have three  
17 bedrooms and two and a half baths, with  
18 approximately 1,912 square feet of gross  
19 floor area and 100-percent lot occupancy.  
20 In addition, it will have a one-car garage.

21 We work closely with each HBRB,  
22 and in particular, Amanda Molson, to further  
23 refine the design. At first, we wanted the  
24 height of the structure to be 26 feet to  
25 allow 11-foot ceiling heights. She felt

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1       this wouldn't be in scale with the alley  
2       dwelling units the left, so the height was  
3       lowered to 22 feet. In addition, the front  
4       door was relocated so it looked more like  
5       carriage house.

6               HBRB approved the design and  
7       assigned it to staff to work with Amy Meyer.  
8       Design details all need attention when shop  
9       drawings are made.

10              And this time, I reached out to  
11       Elliott Eisenberg -- who is to my right --  
12       the owner of 321 A Street, as his house  
13       would be most affected by construction. At  
14       his request, two windows on the north wall  
15       were eliminated to provide him with privacy.

16              In addition, we shared the cost  
17       of removal of the dead tree in the backyard  
18       that overhung the garage. We also worked  
19       out an agreement where I would limit the  
20       hours of construction to nine to five,  
21       Monday through Friday, secure the rear of  
22       his property with fencing, install a gate in  
23       the fence to allow him continued access and  
24       egress from the property.

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1                   I also agreed to carefully remove  
2     the shed that he erected against the wall of  
3     the, one of the garages and repair it if  
4     necessary.     I also agreed that the shed  
5     needed to be removed.     If it became  
6     unstable, I would pay for the reconstruction  
7     of the shed and the storage of his items  
8     during that period.

9                   I also reached out to the ANC and  
10    met with Mark Eichenweiler at the site to  
11    discuss the project.     The conceptual  
12    drawings were approved. After meeting with  
13    Zoning, planning, and environmental, the  
14    project was passed by the full ANC  
15    unanimously, 6-0.

16                  I also met with Gary Peterson of  
17    the Capital Restoration Society at the site.  
18    He seemed pleased with the design and  
19    recommended that the matter be brought  
20    before the Zoning Committee. The project as  
21    proposed passed through the Zoning Committee  
22    without objection.

23                  During this time, I tried to  
24    reach out to as many neighbors as possible  
25    to discuss the matter.     Many of the

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1 neighbors have expressed concern about the  
2 noise, parking, and congestion in the alley.  
3 I have agreed, and it is noted in the ANC,  
4 where they will limit construction hours,  
5 nine to five, Monday through Friday, to try  
6 to minimize, as much as possible, any  
7 disturbance due to noise.

8 Please note -- and I think this  
9 is important -- that this will eliminate 32  
10 hours of construction I could have been  
11 allowed under current law. This would  
12 similarly add to the cost of construction  
13 and would delay the completion of  
14 construction of the project by at least  
15 three months.

16 In addition, I will make it part  
17 of the construction management agreement  
18 that I will sign with the general contractor  
19 that they will not park in the alley at all.

20 At the request of my architect,  
21 we conducted a shadow study that determined  
22 the impact of the project would have on the  
23 neighbors. This will approximately add an  
24 approximately 11 feet of height, and a  
25 considerable shadow is also passed by the

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1 six-story apartment building directly to the  
2 south, the John Jay. It was determined that  
3 the project will have little to no effect  
4 upon the adjoining neighbors.

5 Recently, I've been in touch with  
6 more neighbors. Recently, I spoke to Thomas  
7 Kolb, less at 12 Fourth Street, Northeast.  
8 He was listed initially as a witness by  
9 Janet Schmidt, owner of 314 Fourth Street,  
10 Northeast. He's stated he did to discuss  
11 the project at all with Ms. Schmidt, and  
12 when I described the project, he was pleased  
13 with the design and thought it would improve  
14 the alley. I also spoke with  
15 Margaret Keeling, the owner of 16 Fourth  
16 Street, Northeast, and she, too, she was not  
17 going to be a witness by Ms. Schmidt and had  
18 not spoken with her about the matter. She,  
19 too, was pleased by the design and stated  
20 that she would "excited." I had  
21 (inaudible), and she's not opposed to the  
22 process project.

23 Over the last month and a half,  
24 on behalf of my attorney, I've held numerous  
25 meetings with neighbors to discuss their

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1 concerns about the project. In the course  
2 of our three meetings, we created a  
3 construction management agreement to address  
4 the questions and concerns. After many  
5 hours and revisions, I am disappointed that  
6 the parties will not sign the agreement.

7 Please note that considerable  
8 time, effort, expense went into this, and I  
9 am at a loss as to why the neighbors will  
10 not agree to this.

11 Thank you for your time.

12 That's all that I have to present  
13 at this time. Thank you.

14 CHAIRPERSON JORDAN: Mr. Brown,  
15 do you have any questions?

16 Well, let me first -- you've  
17 given the financial numbers, but have you  
18 done anything in -- I know you've given a  
19 cap rating; it's still in a C. Are you  
20 doing any financing of this, or is it all of  
21 your pocket?

22 MR. FITZGERALD: We do  
23 construction planning.

24 CHAIRPERSON JORDAN: Okay, so I  
25 do need the rate of return on that.

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1                   And what is the potential growth  
2           in value, and what's that window?

3                   MR. FITZGERALD:   Growth and value  
4           of, say, a --

5                   CHAIRPERSON JORDAN:   Let's assume  
6           that this property is done as an artist's  
7           studio or as a garage and that it's taken  
8           out of a dilapidated state.  Now it's surely  
9           going to have an increase in value at this  
10          time because the owner is going to have a  
11          greater increase in value.  It may not  
12          return the greatest cap rate, but it may  
13          have a buyout rate that becomes over.  That  
14          needs to be considered in the factors of  
15          whether or not this is a financially  
16          feasible deal.

17                  MR. FITZGERALD:    You know, I  
18          haven't looked into that closely because --

19                  CHAIRPERSON JORDAN:       Do you  
20          understand what I'm saying?

21                  MR. FITZGERALD:    -- yes, I do  
22          understand, sir.

23                  That, art studios are, are very  
24          limited in number on Capitol Hill.  In the,  
25          the numbers I received, I can't imagine that

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1       they're going to appreciate at a very, you  
2       know, accelerated rate.

3                   CHAIRPERSON JORDAN:     all right.  
4       We need to see that.

5                   MR. FITZGERALD:    Okay.

6                   CHAIRPERSON JORDAN:   And then the  
7       marketability,     feasibility     study     on  
8       marketing those units, and what have you.

9                   MR.    FITZGERALD:     We'll have,  
10       we'll do the best, sir.    I will try and  
11       provide --

12                   CHAIRPERSON JORDAN:   Do any of  
13       you have any questions for Mr. FitzGerald  
14       before   Mr.    Brown    does   any   other  
15       presentation?

16                   (No response.)

17                   CHAIRPERSON JORDAN:   Okay.   Mr.  
18       Brown.

19                   MR. BROWN:    Well, I would point  
20       out and perhaps ask Mr. FitzGerald to  
21       elaborate.

22                   Questioning by Mr. Brown

23                   MR. BROWN:    We laid out in our  
24       prehearing statement -- which I won't repeat  
25       -- in some detail the variance test.   But

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1 particularly, as the -- and I think he's hit  
2 on it generally, both in the PowerPoint and  
3 in his written testimony -- but the, the,  
4 the factors -- the "confluences" is the term  
5 that you used -- the factors that came  
6 together to create the situation with these,  
7 these two properties and how, how limited  
8 and difficult his, his choices were for  
9 anything that either was allowed, such as an  
10 artist's studio or something that was there  
11 at this time.

12 MR. FITZGERALD: Quite simply, I  
13 believe that the single-family dwelling unit  
14 that we talked about would be the highest  
15 and best use for the property.

16 CHAIRPERSON JORDAN: Well, I  
17 haven't seen any documentation either.

18 MR. FITZGERALD: Okay.

19 CHAIRPERSON JORDAN: I mean you  
20 just gave me the one side. I haven't seen  
21 the other side. And then there are some of  
22 the things that are missing.

23 If we're going to do a  
24 comparison, and your argument is that  
25 there's a financial hardship that's going to

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1 support your use variance argument, then we  
2 need to see both sides of the street, not  
3 just the one side you wanted to give us.

4 Are you following me?

5 MR. FITZGERALD: I, I've tried  
6 to lay out as best I can --

7 CHAIRPERSON JORDAN: Yes, but you  
8 have not presented the Board the cost and  
9 financial aspect of it, so we can compare it  
10 as a single-family dwelling on the alley  
11 versus not being an artist studio or a  
12 garage producing income.

13 MR. FITZGERALD: Okay.

14 CHAIRPERSON JORDAN: Or did I  
15 miss it. Did you present those numbers to  
16 us? Maybe I missed it.

17 MR. FITZGERALD: I tried to say  
18 what the income would be, derived, if these  
19 were held in terms of renting them. You  
20 take the income and you --

21 CHAIRPERSON JORDAN: Yes, but I  
22 need to see that. I'm talking about the  
23 single-family dwelling.

24 MR. FITZGERALD: Okay.

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1                   CHAIRPERSON JORDAN:       Did you  
2       present that to us?

3                   MR. FITZGERALD:   In terms of the  
4       single-family dwelling, the, the project  
5       would cost approximately \$600,000 to  
6       construct, and I'm hoping that the sale  
7       price would be somewhere around \$900,000.  
8       So possibly, we could eke out about \$300,000  
9       in terms of profit.   That's if everything  
10      goes according to plan.

11                  Questioning by Mr. Brown (cont'd)

12                  MR. BROWN:   But that, 600,000 is  
13      the actual costs of construction.

14                  MR. FITZGERALD:   Yes.

15                  MR. BROWN:   It doesn't include  
16      the value of the land.

17                  MR. FITZGERALD:   And let me also  
18      say, too, it does not calculate in  
19      architectural fees, zoning attorney fees,  
20      engineering fees --

21                  CHAIRPERSON JORDAN:   That's not  
22      in the \$600,000?

23                  MR. FITZGERALD:   No, sir.   That  
24      would be in addition.

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1                   CHAIRPERSON JORDAN:     Okay, then  
2     we need to see the numbers broken down, as I  
3     said initially, so we can have a realistic  
4     comparison as to what the value, costs, and  
5     returns are; okay?

6                   MR. FITZGERALD:    Okay.

7                   MR. BROWN:     Before moving on to  
8     Mr. Eisenberg, are there any other questions  
9     from the Board or   --

10                  CHAIRPERSON JORDAN:                Yes.  
11     Certainly, Mr. Miller.

12                  MEMBER MILLER:     Thank you, Mr.  
13     Chairman.

14                  On     the     issue     of     cost     of  
15     renovating it into a garage, I would just  
16     want to see a little more detail as to the  
17     elements that contribute to a \$110- to  
18     \$130,000 to demolish and create a garage.  
19     It seems a little high. I'd like to know  
20     what the cost of demolition is, what the  
21     cost of building garage is, and what the  
22     cost would be, of just having a parking  
23     space there, just a pad, and what income you  
24     could get from that, as well.

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1 I don't need that right now, but  
2 I would like that at some point.

3 MR. BROWN: Those breakdowns in  
4 numbers for the various scenarios were  
5 included in the Acadia documents, so.

6 CHAIRPERSON JORDAN: In the what?

7 MR. BROWN: The Acadia letter.

8 MR. FITZGERALD: It, it shows, in  
9 great detail, the different elements that  
10 would need to be added, renovated, upgraded.

11 Currently, there is only  
12 electricity that comes in one of these  
13 garages. Gas would need to be brought in.  
14 Separate HVAC would be required, shoring up  
15 of the structure, construction of new  
16 windows, construction of a new roof, and  
17 then also, construction of bathrooms would  
18 be required. It, you're basically redoing  
19 the entire property over.

20 Let me also say, too, that I  
21 believe that the proposal is a very  
22 competitive number. It does not factor in  
23 any of the utility work that would be  
24 required to do this, as well, too. This is  
25 just purely the contractor's fees.

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1 CHAIRPERSON JORDAN: I don't see  
2 the -- okay.

3 Where are the costs of doing the  
4 single-family dwelling? I don't see that in  
5 the Arcadia map.

6 MR. FITZGERALD: (No response.)

7 CHAIRPERSON JORDAN: The  
8 breakdown -- I don't see that in Arcadia.

9 MR. FITZGERALD: I'll see if I  
10 can come up with that, Your Honor.

11 CHAIRPERSON JORDAN: Are there  
12 any other questions so far, Board, on Mr.  
13 FitzGerald or Mr. Brown's presentation?

14 (No response.)

15 CHAIRPERSON JORDAN: Mr. Brown,  
16 is there anything else then?

17 (No response.)

18 CHAIRPERSON JORDAN: Let me ask  
19 one of the question.

20 So your argument is that the  
21 exceptional condition with this property is  
22 that it in a dilapidated and deteriorated  
23 state, the garage itself.

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1                   But what about the other piece of  
2                   property? I know you said that about the  
3                   garage.

4                   MR. FITZGERALD: There are two  
5                   garages that are in, in question here.

6                   CHAIRPERSON JORDAN: Okay.

7                   MR. FITZGERALD: That's what  
8                   we're proposing to demolish, and construct a  
9                   single-family dwelling unit on top of it.

10                  CHAIRPERSON JORDAN: And then  
11                  you're saying there's limited use of the  
12                  garage space because it's in, again, a  
13                  dilapidated state, and it's being used as  
14                  storage.

15                  MR. FITZGERALD: That, that's  
16                  right. The property, as I said, has been  
17                  vandalized, broken into numerous times, and  
18                  is, and through its age, too, is in bad  
19                  condition.

20                  The concrete floor in one of the  
21                  units is cracked badly, and would need to be  
22                  entirely replaced, regardless of its used  
23                  use. And one of the garages does not even  
24                  have a floor. It's gravel dust.

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1                   CHAIRPERSON JORDAN:   How long as  
2   your ownership group -- I'm using that term  
3   broadly -- been in ownership of this  
4   property?

5                   MR. FITZGERALD:   Fifty years.

6                   CHAIRPERSON   JORDAN:               Fifty  
7   years.

8                   MR. FITZGERALD:   Yeah.

9                   Let me also just say, too, at no  
10   time was these garages -- I think I stated  
11   this before -- ever used as, as, as parking.  
12   We're not taking parking away from the  
13   neighborhood.       It's been purely use,  
14   initially as a shop, and then somewhere to,  
15   to store supplies, and then after that,  
16   trash.

17                  CHAIRPERSON JORDAN:   Okay.

18                  MR. BROWN:   Mr. Chairman, can I  
19   also point out -- and this is in our  
20   prehearing statement and our application, as  
21   well -- the smaller of the garages there --  
22   that's Lot 22 -- that's less than 500 feet,  
23   that lot, standing alone.   And then the  
24   larger garage is the rear of 319 A.

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1                   So, from a logistical standpoint,  
2     you have a substandard Lot 22 that, that  
3     basically is largely usable by itself, and  
4     the only way to, to put together a piece of  
5     land for reasonable use of any kind, whether  
6     it's a garage or an artist studio or what  
7     not, is to combine that with some other part  
8     of land so that you're dealing with  
9     something other than 490 square feet --

10                  CHAIRPERSON JORDAN:     Now is Lot  
11     22 is 500 square feet, did you say?

12                  MR. BROWN:            It's about, it's  
13     less than 500 square feet.

14                  CHAIRPERSON JORDAN:     Are the  
15     other lots on that alley or that court the  
16     same size and dimensions?

17                  MR. BROWN:     No.   And if we could,  
18     I think we have a site plan.   If you -- and  
19     most of the properties are row dwellings,  
20     row lots -- let's see.   Go back.

21                  CHAIRPERSON JORDAN:     That's a  
22     good one to show.

23                  MR. BROWN:     Yeah, that's a good  
24     one.

25                         The shows -- and -- sorry.

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1                   This is, this is our site back  
2                   here, which actually doesn't show the  
3                   breakdown of the, the lots here, but most of  
4                   the dwellings here are row dwellings.

5                   And here, the carriage houses  
6                   here, that's on a single, much larger lot so  
7                   that, to be left with a little, little piece  
8                   of land standing by itself is very difficult  
9                   to use by itself, and to be practical, has  
10                  to --

11                  CHAIRPERSON JORDAN: I just want  
12                  to make sure you're clear that each lot has  
13                  to stand on its own bottom, each piece of  
14                  property, for us as we look at these  
15                  variances that you're asking for.

16                  MR. BROWN: Absolutely, but --

17                  CHAIRPERSON JORDAN: Okay.

18                  MR. BROWN: -- but -- and, and  
19                  what I'm saying is that Lot 22 doesn't stand  
20                  --

21                  CHAIRPERSON JORDAN: Oh, yeah, I  
22                  understand the issue.

23                  MR. BROWN: -- other than it, it  
24                  was created in 1886 and is, is an old

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1       stable. It doesn't really stand by itself  
2       from a zoning standpoint.

3                   CHAIRPERSON JORDAN: Ms. Allen.

4                   VICE CHAIR ALLEN: Thank you,  
5       Mr. Chairman.

6                   Mr. Brown, doesn't, in fact, the  
7       R-4 area allow or permit uses for that  
8       space, like parking or storage? There are  
9       permitted uses, even at that size? Isn't  
10      that correct?

11                  MR. BROWN: Yes, an artist's  
12      studio is allowed. Now, whether this would  
13      qualify -- and again, we've looked at that.  
14      And you have to, from Mr. FitzGerald to  
15      judge, the cost and value of that as opposed  
16      to those limited uses, as opposed to what  
17      he's presenting here.

18                  And I think we've, we've provided  
19      evidence. You've asked for more detail,  
20      which we certainly can, because I think it  
21      will support that.

22                  Economic hardship in this context  
23      is certainly one --

24                  VICE CHAIR ALLEN: Right. I  
25      just was -- you said that there really was

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1 no use for those, and I was, in fact,  
2 addressing that one point, that in fact  
3 there are uses that are permitted that would  
4 fit the size, as it currently exists. I  
5 just wanted to clarify that.

6 MR. BROWN: We recognize that,  
7 and, and --

8 VICE CHAIR ALLEN: Okay. Thank  
9 you.

10 MR. BROWN: An interesting,  
11 also, factor -- this is more Mr. Miller's  
12 bailiwick -- but we look at the ZRR that,  
13 the proposal currently pending, which has a  
14 lot of basis for, would certainly make this  
15 single-family dwelling on an alley lot a  
16 much easier task. It would be -- rather  
17 than the laundry list of variances we have  
18 now, it would be by special exception.

19 So I think there's, there's some  
20 recognition both in the existence -- and  
21 we've, again, we've put this in our  
22 appearance statement -- the existence of  
23 the, the other carriage houses and how we've  
24 attempted to blend to it, but also  
25 recognition that historically, the alleys

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1 and the alley dwellings are, are something  
2 that exist and are valuable. And so, to  
3 consider it for a special exception endorses  
4 that.

5 CHAIRPERSON JORDAN: Yes, but you  
6 know that's not before us.

7 MR. BROWN: No, no, no, but I --

8 CHAIRPERSON JORDAN: And that's  
9 if, maybe, if it happens, if it's going to  
10 be adopted.

11 I understand this chart. I just  
12 want to make sure we're all clear.

13 MR. BROWN: Yeah, absolutely, but  
14 it certainly, it shows a great deal of  
15 through from our friends at the Office of  
16 Planning and others to take into account --  
17 there are only two places where alley  
18 dwellings exist: Capitol Hill and perhaps  
19 Georgetown -- and take into consideration a  
20 broader historical basis and facts to look  
21 at that. And I think it's, it's worthwhile  
22 to consider.

23 It's not the law of the land  
24 until later, but I think it's --

25 CHAIRPERSON JORDAN: If ever.

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1 MR. BROWN: Got it.

2 CHAIRPERSON JORDAN: Okay.

3 Any other questions of the

4 Applicant?

5 Ms. Schmidt, cross-examination?

6 MS. SCHMIDT: Mr. Chairman, could

7 I just, could I ask for a brief break? I'm

8 having a hard time swallowing. I'm on an

9 antibiotic that makes my mouth very dry. If

10 we have just, like, three minutes?

11 CHAIRPERSON JORDAN: Okay.

12 That's fine.

13 MS. SCHMIDT: Thank you so much.

14 (Whereupon, a recess was taken

15 at 12:06 p.m.)

16 (Whereupon, the hearing

17 reconvened at 12:11 p.m.)

18 MR. BROWN: Mr. Chairman, could

19 I -- Mr. Eisenberg has time constraints. If

20 we could allow him to testify and be cross-

21 examined and then double back to Mr.

22 FitzGerald, that would be appreciated.

23 SPEAKER: (Off mic.)

24 CHAIRPERSON JORDAN: Sure enough.

25 Hey, about that?

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1                   Okay.    We're also move rapidly  
2   into a lunch period.

3                   Let's -- how long?

4                   MR. BROWN:    Very brief.

5                   CHAIRPERSON JORDAN:   All right,  
6   then --

7                   MR.    EISENBERG:        I   have   two  
8   minutes at the most.

9                   CHAIRPERSON JORDAN:   All right.  
10   Very good.

11                   Testimony of Elliot Eisenberg

12                   MR.    EISENBERG:    Okay, and thank  
13   you for accommodating my time limitations.

14                   Testimony OF Elliot Eisenberg

15                   MR.    EISENBERG:        I'm,   I'm   a  
16   proponent of it, and for a lot of the  
17   reasons that Mr. FitzGerald referred to.

18                   A couple of other neighbors on  
19   Fourth Street -- you know, right now back  
20   there, it is, it is a mess, to say the  
21   least, and the mess is not just the garages.  
22   It's just overall a mess that's been made.  
23   My backyard is been broken into.   I suspect  
24   that if there were more people living back  
25   there, it would provide for more security.

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1 I've been provided with  
2 assurances that, as it might impact me  
3 during the construction period, Mr.  
4 FitzGerald will accommodate me and provide  
5 me with any security issues that I might  
6 have, and I'm comfortable with those  
7 assurances that I've received.

8 And I frankly think, in the end,  
9 it will make that Miller Court just a lot  
10 more attractive and just a lot better place,  
11 you know, to walk through, which I and my  
12 family have to do regularly.

13 That's really all I have to say  
14 in support of it.

15 CHAIRPERSON JORDAN: All right.  
16 Thank you.

17 Board, do you have any questions  
18 of Mr. Eisenberg?

19 (No response.)

20 CHAIRPERSON JORDAN: Ms.  
21 Schmidt, are there any questions you would  
22 like to ask?

23 MS. SCHMIDT: Yes, please.

24 Questioning by Ms. Schmidt

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1 MS. SCHMIDT: Mr. Eisenberg,  
2 isn't it true that you don't have parking in  
3 the alley?

4 MR. EISENBERG: It is true that I  
5 don't have parking. I don't park in the  
6 alley.

7 MS. SCHMIDT: You don't park in  
8 the alley. That's because you don't have  
9 any parking. You don't have a parking spot  
10 in the rear of your house.

11 MR. EISENBERG: I do not have a  
12 parking spot in the rear of my house.

13 MS. SCHMIDT: Mr. Eisenberg, are  
14 you aware that security cameras have gone up  
15 in the alley recently?

16 MR. EISENBERG: I'm not aware of  
17 any security cameras in the alley. And I  
18 don't know what you mean by "recently," so.

19 MS. SCHMIDT: Within the last few  
20 weeks.

21 MR. EISENBERG: I'm, I'm not  
22 aware of that at all.

23 MS. SCHMIDT: I have no further  
24 questions.

25 CHAIRPERSON JORDAN: Okay.

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1 Thank you.

2 MR. EISENBERG: Thank you.

3 CHAIRPERSON JORDAN: Ms. Schmidt,  
4 could you continue to your cross-examination  
5 of Mr. FitzGerald?

6 Questioning by Ms. Schmidt (cont'd)

7 MS. SCHMIDT: Mr. Fitzgerald --

8 CHAIRPERSON JORDAN: Would you  
9 remain your seat while you --

10 MS. SCHMIDT: I'm sorry; I'm used  
11 to doing it differently. Thank you.

12 MS. SCHMIDT: Mr. FitzGerald,  
13 let's talk about your length of ownership of  
14 the property and what your family did over  
15 the course of the 45 years that has owned it  
16 to keep up the properties.

17 Could you tell us what, what  
18 you've expended on the property since it was  
19 acquired by your family?

20 MR. FITZGERALD: I can't, I can't  
21 give you an exact dollar amount.

22 As I said in my testimony  
23 earlier, we painted the garages. We  
24 repaired doors numerous times. We boarded  
25 up broken windows. We tried to, to, you

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1 know, take care of it. We fixed roof leaks  
2 -- a variety of different things, to try and  
3 keep them as usable space for what we use it  
4 for.

5 I can't give you an exact dollar  
6 amount because, as you said, it's been over  
7 40 years, and I don't know what that is, but  
8 I can say that, you know, we have expended  
9 money on it.

10 MS. SCHMIDT: Would it be fair to  
11 say that since you've been -- let me lay a  
12 foundation here.

13 You stated in the past that  
14 you've been overseeing those properties  
15 since 1990; is that correct?

16 MR. FITZGERALD: Um-hmm. I'm one  
17 of the new people who were receive that,  
18 yeah.

19 MS. SCHMIDT: Would it be, would  
20 you be able to estimate that you've spend  
21 less than \$10,000 keeping up those  
22 properties since 1990?

23 MR. FITZGERALD: As I said  
24 before, I don't have an exact figure. I'm -  
25 -

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1 MS. SCHMIDT: I, I'm just asking  
2 for an estimate.

3 Less than \$10,000?

4 MR. FITZGERALD: I don't, I don't  
5 -- Ms., Ms. Schmidt, I don't know to state,  
6 or.

7 MS. SCHMIDT: Now, you've  
8 mentioned that these properties have been in  
9 your family, so I want to talk about the  
10 value of the properties at the time they  
11 were acquired, given that you were bringing  
12 forth that these have no economic value.

13 You have stated that your father  
14 inherited these properties. Do you know  
15 what your grandfather acquired 319 A for  
16 when he purchased the property?

17 MR. FITZGERALD: No.

18 MS. SCHMIDT: Would you believe  
19 that it was less than \$12,000?

20 MR. FITZGERALD: I don't know.  
21 As I said before, I don't know.

22 MS. SCHMIDT: Would you follow  
23 know if he were here?

24 MR. FITZGERALD: Probably not.  
25 It's 50 years ago.

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1                   MR. BROWN:    I'm not so sure --  
2                   I'm not sure of the reference.

3                   CHAIRPERSON JORDAN:   Sustained.

4                   Next question.

5                   Questioning by Ms. Schmidt (cont'd)

6                   MS. SCHMIDT:   Do you know what,  
7                   the acquisition cost of the smaller of the  
8                   two buildings, which was a stable.

9                   MR. FITZGERALD:   That was done by  
10                  the previous owner.   No.

11                  MS. SCHMIDT:   So --

12                  MR. FITZGERALD:   We acquired the  
13                  property with the two lots to the rear.  
14                  There, there was one lot that includes one  
15                  garage and a second lot.   It was all bought  
16                  at one time.   I don't know what it was  
17                  acquired for.

18                  MS. SCHMIDT:   Have you had offers  
19                  to purchase either one of those garages in  
20                  the past?

21                  MR. FITZGERALD:   There was a  
22                  verbal offer about 15 years ago.   I think  
23                  that you made a, a verbal offer couple a  
24                  weeks ago.

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1 MS. SCHMIDT: Yeah, would it be a  
2 fair statement that I offered \$75,000 cash,  
3 as-is, on the smaller of the two structures?

4 MR. FITZGERALD: It wasn't in  
5 writing, so it's not a considered offer.

6 MR. BROWN: Actually, I thought  
7 the amount was \$175,000. I was in the room.

8 MS. SCHMIDT: And there was --

9 CHAIRPERSON JORDAN: Now, Mr.  
10 Brown --

11 (Whereupon, the parties engaged  
12 in simultaneous conversation.)

13 CHAIRPERSON JORDAN: You're not  
14 testifying --

15 MR. BROWN: I'm not testifying.

16 CHAIRPERSON JORDAN: -- and she's  
17 doing cross-examination. And you can come  
18 back on redirect.

19 MR. BROWN: I am, I'm making an  
20 objection to her, to her statement.

21 CHAIRPERSON JORDAN: Overruled.

22 MR. BROWN: Yes.

23 CHAIRPERSON JORDAN: And you can  
24 come back on redirect.

25 Go ahead.

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1                   Questioning by Ms. Schmidt (cont'd)

2                   MS. SCHMIDT:    Would it be, would  
3   you agree that the minutes of the meeting  
4   that were taken at that, the neighborhood  
5   meeting reflected an offer was made on both  
6   of the garages by me?

7                   MR. FITZGERALD:  Um-hmm, yes.  As  
8   I said, it was verbal; there was nothing  
9   further that went past that.

10                  I'd also like to say, too, that  
11   maybe your desire --

12                  MS. SCHMIDT:       There is no  
13   question pending.

14                  MR. FITZGERALD:    -- that you  
15   covet the garages might be a part of why  
16   you're opposing the proposed construction.

17                  MS. SCHMIDT:       No; actually,  
18   actually --

19                  CHAIRPERSON JORDAN:  We're not  
20   have that type of argument.

21                  MS. SCHMIDT:       We're not having  
22   that argument.

23                  CHAIRPERSON JORDAN:  The next  
24   question, please.

25                  Questioning by Ms. Schmidt (cont'd)

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1 MS. SCHMIDT: Would you agree  
2 that there were minutes taken at the meeting  
3 that reflected offers being made on the  
4 property?

5 MR. FITZGERALD: As I said, they  
6 were verbal. Yes, but there were offers me.

7 MS. SCHMIDT: Would you agree  
8 that the minutes of the meeting reflect that  
9 those offers were offered to be --

10 MR. BROWN: I'm not sure the  
11 relevance of these -- you've asked us to  
12 move on.

13 CHAIRPERSON JORDAN: Well, I'm  
14 going to sustain the objection because it's  
15 not relevant here and also calls for whole  
16 bunch of hearsay.

17 But go ahead.

18 Questioning by Ms. Schmidt (cont'd)

19 MS. SCHMIDT: Mr. FitzGerald, are  
20 you aware what parking spaces for on Capitol  
21 Hill?

22 MR. FITZGERALD: I have a pretty  
23 good idea because of, my family owns parking  
24 spot on Capitol Hill. I've leased them.

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1 MS. SCHMIDT: And do you know  
2 what the current -- can you tell the Board  
3 what the current rate is for a parking spot?

4 MR. FITZGERALD: Maybe \$200 a  
5 month.

6 MS. SCHMIDT: And if you were to  
7 use the, tear down bulk of the structures,  
8 how many parking spots with that create?

9 MR. FITZGERALD: Two.

10 MS. SCHMIDT: For both the garage  
11 and the former stable.

12 MR. FITZGERALD: Yes.

13 MS. SCHMIDT: I'd like to show  
14 you a photograph.

15 I'll (off mic) to you, but what  
16 is your --

17 CHAIRPERSON JORDAN: You need to  
18 have the microphone. If you're get up and  
19 away from the table, I'm going to ask that  
20 you use the wireless microphone, please.

21 Questioning by Ms. Schmidt (cont'd)

22 MS. SCHMIDT: Would you agree  
23 that the garage --

24 CHAIRPERSON JORDAN: Would you  
25 hold the --

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1 VICE CHAIR ALLEN: Turn it on.  
2 CHAIRPERSON JORDAN: Is the  
3 microphone on? Can you hear --  
4 MS. SCHMIDT: (Off mic.)  
5 CHAIRPERSON JORDAN: I don't  
6 think it's on.  
7 Questioning by Ms. Schmidt (cont'd)  
8 MS. SCHMIDT: Would you agree the  
9 garage between, behind at 319 A Street is a  
10 two-stall garage?  
11 MR. FITZGERALD: No.  
12 MS. SCHMIDT: How wide is the  
13 garage?  
14 MR. FITZGERALD: Give me a second  
15 please.  
16 (The witness reviewed documents.)  
17 One is 22 feet wide, and the  
18 other one is a little over 15 feet wide.  
19 CHAIRPERSON JORDAN: What is it  
20 again? I'm sorry.  
21 MR. FITZGERALD: Twenty-two feet,  
22 and the other one is 15 feet.  
23 Questioning by Ms. Schmidt (cont'd)

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1 MS. SCHMIDT: Wouldn't you agree  
2 that you can fit two cars side by side and a  
3 22-foot-wide garage?

4 MR. FITZGERALD: Not legally.

5 MS. SCHMIDT: Would you agree  
6 that you can fit two cars side by side in a  
7 22-foot garage.

8 MR. FITZGERALD: As I said  
9 before, not legally.

10 CHAIRPERSON JORDAN: Would you  
11 please take your seat, unless you're going  
12 to use -- and then you've asked it, he's  
13 answered it twice now.

14 Questioning by Ms. Schmidt (cont'd)

15 MS. SCHMIDT: Mr. FitzGerald, you  
16 stated during your testimony that you, that  
17 there was a planter where the planned gas  
18 meter would be installed; is that correct?

19 MR. FITZGERALD: And we also  
20 showed a photograph of it.

21 MS. SCHMIDT: Is that, is that  
22 planter box still there?

23 MR. FITZGERALD: To the best of  
24 my knowledge, no. I don't know who removed

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1 it and what became of it. I didn't install  
2 it. It was placed there many years ago.

3 MS. SCHMIDT: But you stated that  
4 planter box was there; is that correct?

5 MR. FITZGERALD: As I said  
6 before, yes.

7 MS. SCHMIDT: And let's look at  
8 the photograph, and I would like to show  
9 your photograph I've taken.

10 MR. FITZGERALD: I can see that  
11 the planter box is not there. If we can  
12 move forward, I appreciate it.

13 MS. SCHMIDT: So you concede you  
14 told the Board that there was a planter box  
15 there when in fact that planter box was not  
16 there; is that correct?

17 MR. FITZGERALD: I have a picture  
18 that I showed that it was there. It is not  
19 there now. I've stated this twice.

20 Can we please move on?

21 CHAIRPERSON JORDAN: Your  
22 objection?

23 Hold on, Mr. FitzGerald. Let me  
24 say this.

25 MR. FITZGERALD: Yes.

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1 CHAIRPERSON JORDAN: We're going  
2 to conduct this hearing in a proper way.

3 You're not going to instruct  
4 counsel on when to move on and when not move  
5 on.

6 MR. FITZGERALD: Excuse me, Mr.  
7 Chairman. I apologize.

8 CHAIRPERSON JORDAN: Now, Mr.  
9 Brown, please.

10 MR. BROWN: My objection was that  
11 Mr. FitzGerald's testimony was -- in his  
12 direct testimony, which he tried to  
13 reiterate on cross-examination, was --  
14 several times -- was that the planter was  
15 there, he didn't put it there, and, and it  
16 is his understanding that it is no longer  
17 there, in his direct testimony.

18 So we're beating a dead horse  
19 here.

20 CHAIRPERSON JORDAN: Well --

21 MR. BROWN: For no purpose.

22 CHAIRPERSON JORDAN: I don't know  
23 about the second part, but he clearly said  
24 he didn't put it there.

25 Okay, ask your next question.

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1                   Questioning by Ms. Schmidt (cont'd)

2                   MS. SCHMIDT:     Does this lower  
3                   picture on the right-hand corner with the  
4                   FitzGerald truck parked in front of the  
5                   stable reflect that there is no planter box  
6                   there at this time?

7                   MR. FITZGERALD:     As I said  
8                   before, I concede that.     Yes, there's no  
9                   planter box there.

10                  MS. SCHMIDT:     Now, you've stated  
11                  that there's no parking in front of those  
12                  garages.

13                  MR. FITZGERALD:     Um-hmm.

14                  MS. SCHMIDT:     Do you see these  
15                  photographs here?

16                  MR. FITZGERALD:     (No response.)

17                  MS. SCHMIDT:     Would you agree  
18                  that there is parking for your management  
19                  company in front of those garages?

20                  MR. FITZGERALD:     As you can see,  
21                  the open door of the garage, we were getting  
22                  materials in or out of the garage --

23                  CHAIRPERSON JORDAN:     For the sake  
24                  of the Board, let me have that question back  
25                  so I can understand it.

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1                   Are you saying there are legally  
2       permissible parking spaces, or are you  
3       saying that people just park the cars there?

4                   MS. SCHMIDT:     They park their  
5       cars there.     But the FitzGerald property  
6       people in the past have asserted to me that  
7       when this becomes, is redesignated --

8                   CHAIRPERSON JORDAN:    So are you  
9       asking him -- for the sake of clarifying the  
10      question; I'm not asking you to testify --  
11      are you asking him, are these legally  
12      allowable parking spaces? Or are you saying  
13      the cars are parked there, regardless of  
14      whether it's legal?

15                  MS. SCHMIDT:     I'm going to ask  
16      him both.

17                  Questioning by Ms. Schmidt (cont'd)

18                  MS. SCHMIDT:     Are there cars  
19      there?

20                  MR. FITZGERALD:   Yes.

21                  MS. SCHMIDT:     And they have the  
22      FitzGerald logo.

23                  MR. FITZGERALD:   Yes.

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1 MS. SCHMIDT: And the upper  
2 picture here reflects the use of that  
3 garage.

4 MR. FITZGERALD: Yes.

5 MS. SCHMIDT: In the past, has  
6 FitzGerald property ever taken the position  
7 that they're entitled to park there because  
8 it's on Miller's Court and they can block  
9 their own entrance?

10 MR. FITZGERALD: I'm not aware of  
11 it.

12 The, the use of, of parking  
13 vehicles in front of there is very similar  
14 to, like, a supply truck or UPS truck  
15 parking illegally for a few --

16 CHAIRPERSON JORDAN: I'm really  
17 trying to get to the relevance of that  
18 question in regards to what the zoning  
19 requirements are and what we're trying to  
20 show.

21 Counsel, do you want to --

22 MS. SCHMIDT: It's been  
23 represented that that's a 30-foot-wide alley  
24 and that they would, as a matter of right,

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1 be able to build on it because it's a 30-  
2 foot alley.

3 I'm demonstrating, by virtue of  
4 that parking, that it's not a 30-foot alley,  
5 and with the next exhibit, that that 30-foot  
6 width is reduced further by a gas meter  
7 behind the apartment building --

8 CHAIRPERSON JORDAN: Okay, I'd  
9 rather if you ask, directly, the questions  
10 so that we can get right to the point.

11 Questioning by Ms. Schmidt (cont'd)

12 MS. SCHMIDT: Mr. FitzGerald, in  
13 your application, you have represented that  
14 the alley is 30 feet wide; is that correct?

15 MR. FITZGERALD: That's correct.

16 MS. SCHMIDT: Do you see that  
17 parking meter -- excuse me -- that gas meter  
18 in the lower picture?

19 MR. FITZGERALD: Yes.

20 MS. SCHMIDT: Have you ever  
21 measured how far that gas meter sticks out  
22 into the alley?

23 MR. FITZGERALD: No, I have not.

24 MS. SCHMIDT: Would you disagree  
25 that it could be 37 inches?

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1                   MR. FITZGERALD: Ma'am, as I said  
2 before, I don't know the dimensions of it.

3                   MS. SCHMIDT: Let's assume it is  
4 37 inches -- three feet -- how much is how  
5 much does that narrow the alley?

6                   MR. BROWN: Mr. Chairman, what's  
7 the relevance of this?

8                   CHAIRPERSON JORDAN: She offered,  
9 showing that the alley is not supposed to be  
10 30 feet.

11                  MR. BROWN: The alley is, I mean,  
12 the alley is 30 feet wide. Whether it's  
13 encumbered with something is a different  
14 question.

15                  CHAIRPERSON JORDAN: Well, that's  
16 clear.

17                  MR. BROWN: I mean, we --

18                  CHAIRPERSON JORDAN: And your  
19 point again about the alley?

20                  MS. SCHMIDT: Is to --

21                  CHAIRPERSON JORDAN: Is your  
22 question trying to show that the alley as  
23 not 30 feet?

24                  MS. SCHMIDT: It is not. It's  
25 effectively reduced to less than 30 feet.

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1 CHAIRPERSON JORDAN: No, not  
2 "effectively." Is it, by plat, 30 feet?

3 MS. SCHMIDT: It's 30 feet on the  
4 plat if you don't take into account the  
5 encumbrances either by the meter --

6 CHAIRPERSON JORDAN: Okay, then  
7 let's move on. Let's move on.

8 Questioning by Ms. Schmidt (cont'd)

9 MS. SCHMIDT: Mr. FitzGerald, you  
10 own three -- you or your family owns 319 A  
11 Street in some manner of ownership. Is that  
12 correct?

13 MR. FITZGERALD: Yes.

14 MS. SCHMIDT: There are three  
15 units at 319 A; is that correct?

16 MR. FITZGERALD: That's correct.

17 MS. SCHMIDT: What's the rental  
18 that you receive from each of those units?

19 MR. BROWN: What's the relevance  
20 of this as it relates to this case?

21 MS. SCHMIDT: I will explain the  
22 relevance if you ask me, Mr. Jordan.

23 CHAIRPERSON JORDAN: Yes, please.

24 MS. SCHMIDT: They said that they  
25 have no use, that their property is so

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1       impacted, there's so impacted by virtue that  
2       they can't make income from their  
3       properties.

4               The question is to demonstrate  
5       they have three units which are producing in  
6       excess of \$1,000 per month and that this  
7       property is not valueless to them. They do  
8       not suffer a substantial hardship.

9               MR. FITZGERALD:     The property  
10       that's in question, I have no income from  
11       the --

12              CHAIRPERSON JORDAN:   Wait.

13              Mr. Brown --

14              (Whereupon, the parties engaged  
15       in Simultaneous conversation.)

16              MS. SCHMIDT:   I'm not asking --

17              MR. FITZGERALD:     -- I have no  
18       input on the garages

19              Questioning by Ms. Schmidt (cont'd)

20              MS. SCHMIDT:     I'm not asking  
21       about the garages. I'm asking, is there --

22              CHAIRPERSON JORDAN:   Excuse me.

23              Mr. Brown, your reply?

24              MR. BROWN:   (Off mic.)

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1 CHAIRPERSON JORDAN: Is it on the  
2 same lot, are you seeking relief?

3 MR. BROWN: We're asking to, to  
4 take part of the rear of 319 and add it to  
5 Lot 22 --

6 CHAIRPERSON JORDAN: So that  
7 makes it relevant, doesn't it? It does make  
8 irrelevant.

9 MR. BROWN: Well, because, the,  
10 the part of 319 that is being carved off is,  
11 is not revenue-producing now as it exists,  
12 as part of the apartment house lot. So I'm  
13 not so sure how it --

14 CHAIRPERSON JORDAN: All right,  
15 I've got you.

16 So let's overrule the objection.

17 Answer the question really  
18 succinctly, please, if you can.

19 MR. FITZGERALD: Are you asking  
20 what the rental income is on the properties?

21 CHAIRPERSON JORDAN: Yes, I am.

22 MR. FITZGERALD: I believe it's  
23 somewhere around \$1,500 a unit,  
24 approximately.

25 Questioning by Ms. Schmidt (cont'd)

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1 MS. SCHMIDT: You also have a  
2 parking spike that your rent, is that  
3 correct, on 319 A?

4 A. Um-hmm.

5 MS. SCHMIDT: And what's the rent  
6 that you charge on that?

7 MR. FITZGERALD: That's many  
8 times included in the rent of the apartment.  
9 We use it as an inducement to rent the  
10 apartment.

11 MS. SCHMIDT: If you are renting  
12 it, not as part of an apartment, how much do  
13 you rent it for, per month?

14 MR. FITZGERALD: I haven't done  
15 that.

16 MS. SCHMIDT: But you've  
17 previously stated --

18 CHAIRPERSON JORDAN: Next  
19 question.

20 He's already answered that he  
21 does not know, and in fact, he first  
22 dedicated that it's part of the apartment  
23 rentals.

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1 MS. SCHMIDT: At times, to induce  
2 it. So I would ask if I would be allowed to  
3 ask the latitude to ask that --

4 Questioning by Ms. Schmidt (cont'd)

5 MS. SCHMIDT: -- in the past when  
6 you've rented it without it being part of an  
7 apartment unit, what has been the rental  
8 income from the rental of that parking spot?

9 MR. FITZGERALD: I don't recall.

10 MS. SCHMIDT: Would you agree,  
11 though -- you previously testified -- that  
12 parking spots on Capitol Hill that your  
13 family does rent go from a \$200 per month.

14 MR. FITZGERALD: That's correct.

15 MS. SCHMIDT: So would it be fair  
16 to say you're getting \$1,500 for each of the  
17 three units and then, in addition, sometimes  
18 a parking rental rate that might be around  
19 \$200 a month?

20 MR. FITZGERALD: As I said  
21 before, the parking is used as an inducement  
22 to rent the apartments. It's not additional  
23 income.

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1 MS. SCHMIDT: But you have rented  
2 it at times, you've stated, as additional  
3 income.

4 MR. FITZGERALD: In, in, in the,  
5 the past, and --

6 MS. SCHMIDT: Yes.

7 MR. FITZGERALD: -- not at any  
8 time recently.

9 CHAIRPERSON JORDAN: Let me say  
10 this for the sake of expediting this, we do  
11 know that the average or reasonable amount  
12 that's been brought by testimony for parking  
13 spaces, whatever the number of parking  
14 spaces in that area, would be \$200 a month.

15 We know that there's three  
16 spaces, or there is a question whether or  
17 not to spaces to go into the 22 feet width,  
18 and another that's 15. We can get to them  
19 out.

20 MR. FITZGERALD: Okay.

21 Questioning by Ms. Schmidt (cont'd)

22 MS. SCHMIDT: The last thing I  
23 want to talk about with the ANC hearing.

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1                   Is it correct that you approached  
2                   only two neighbors to go to the ANC meeting  
3                   relating to this matter?

4                   CHAIRPERSON JORDAN:       I don't  
5                   understand the question, he only approached  
6                   two to go to the meeting. I don't know what  
7                   that means.

8                   MS. SCHMIDT:     The question I'm  
9                   trying to ask is, is to demonstrate that the  
10                  neighbors were not informed of the ANC  
11                  meeting, which --

12                  CHAIRPERSON JORDAN:   It's not his  
13                  responsibility.

14                  So, next question.

15                  MS. SCHMIDT:     I have nothing  
16                  further.

17                  CHAIRPERSON JORDAN:   Board, any  
18                  questions coming out of that?

19                  (No response.)

20                  CHAIRPERSON JORDAN:       Then  
21                  redirect please, Mr. Brown.

22                  MR. BROWN:     I'll reserve for  
23                  closing arguments and rebuttal.

24                  CHAIRPERSON JORDAN:   Okay.    My  
25                  Board is beating me up about lunch,

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1 especially somebody -- oh, yeah, it is going  
2 on one. I've got a bad habit of missing the  
3 time.

4 I think we can do -- no? Office  
5 of Planning first? We can come back. Okay.

6 Let's take a 30-minute break,  
7 then come back and resume with the Office of  
8 Planning, and then we'll go forward.

9 (Whereupon, the hearing recessed  
10 for lunch at 12:31 p.m.)

11 (Whereupon, the hearing  
12 reconvened at 1:08 p.m.)

13 CHAIRPERSON JORDAN: Let's go  
14 back on the record. The court reporter and  
15 everybody's here, and we're ready.

16 We were at the point of turning  
17 to the Office of Planning. We'll hear  
18 testimony by Office of Planning.

19 Recommendation of the Office of Planning

20 (Matt Jesick)

21 MS. JESICK: Thank you, Mr.  
22 Chairman and members of the Board. My name  
23 is Matt Jesick.

24 The Office of Planning has  
25 concluded that this application has not met

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1 the three-part variance test that must be  
2 achieved for the granting of a variance.

3 The Applicant, in their  
4 application materials, has listed a number  
5 of factors that they feel point towards a  
6 unique or exceptional circumstance on this  
7 property. Most of those factors deal with  
8 the fact that the existing lots are  
9 nonconforming, and even that the future lots  
10 would be non-conforming, and this, of  
11 course, cannot be used as grounds for  
12 determining uniqueness or an exceptional  
13 condition.

14 In addition, they stated that the  
15 garage could not be replaced. That actually  
16 is not true. The Zoning Administrator does  
17 allow the replacement of accessory  
18 structures as long as they do not expand any  
19 existing nonconformities. I believe the  
20 Board already got into the idea that there  
21 are other uses available, such as an  
22 artist's studio, parking, and storage. We  
23 feel those could be viable uses on the site.  
24 So we feel that the Applicant has not  
25 demonstrated either a unique or exceptional

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1 condition or a practical difficulty  
2 resulting from that.

3 Looking at the third part of the  
4 test, which examines detriment to the intent  
5 of the zoning regulations or the public  
6 good, we feel that the intent of the zoning  
7 regulations would be impaired if the relief  
8 were granted. For example, Lot 827 is  
9 already nonconforming lot for lot area.  
10 There is an existing three-unit apartment  
11 building on the site, which have a valid  
12 CFO, and that's fine.

13 But in the R-4 zone, it would be  
14 required, 900 feet of lot area to convert a  
15 structure to an apartment building -- 900  
16 square feet per unit --

17 Thank you.

18 -- and this would be a further  
19 increase in the nonconformity of Lot 827.

20 Also, in regard to the impacts to  
21 adjacent neighbors, while the Applicant is  
22 the owner of Lot 827, there could be impacts  
23 to the residents of, given that the design  
24 includes windows on the north side of the  
25 proposed structure that could impair privacy

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1       that may be expected by the residents of the  
2       existing apartment building in Lot 827.  
3       Those are, those windows are on the lot line  
4       and open up into Lot 827, which is highly  
5       unusual.                   I just wanted to --

6                   CHAIRPERSON JORDAN:       Wait a  
7       minute.    Let me get that.    So Lot 822  
8       windows open up over Lot 827; is that what  
9       you're saying.

10                  MS. JESICK:   The windows proposed  
11       on the new structure, on the new lot.

12                  CHAIRPERSON JORDAN:   Got it, okay.

13       Recommendation of the Office of Planning

14                               (cont'd)

15                  MS. JESICK:   I wanted to clear up  
16       one, one point that was discussed in  
17       testimony this morning.

18                  There is existing de facto  
19       parking on Lot 827, but it's nonconforming  
20       parking. We view the existing garage as the  
21       parking space for Lot 827, whether or not  
22       it's being used as such, and that parking  
23       space would be taken away under zoning.

24                  Now, just one other point.   The  
25       zoning review was brought up earlier, and

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1       that, of course, is a pending regulation;  
2       it's not in effect yet. Even under the  
3       zoning review, however, the creation of the  
4       The new lot that is proposed would not be  
5       allowed; it would still be substandard in  
6       size. So, even under the new regulations,  
7       that would not be permitted.

8                   For all of these reasons, the  
9       Office of Planning recommends that the Board  
10      deny the application, and I'd be happy to  
11      take any questions.

12                   CHAIRPERSON     JORDAN:        Board,  
13      questions of Planning?

14                   Ms. Allen.

15                   VICE CHAIR ALLEN:     Thank you,  
16      Mr. Chair.

17                   Thank you for that report.

18                   Could you also just briefly -- I  
19      think somewhere in your written report, you  
20      talked about the rear yard issue. Could you  
21      just address that as well?

22                   MS. JESICK: Planning. I believe  
23      what you're referring to is on page 3 of the  
24      report, where, in some recent cases, the  
25      Zoning Administrator has determined that if

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1       you exceed more than, if a structure  
2       occupies more than 50 percent of the  
3       required rear yard, then you'd need relief  
4       from the zoning regulations, which forbid  
5       that.

6                   In this case, 100 percent of the  
7       lot is being, would be built upon, and  
8       therefore, 100 percent of the rear yard  
9       would be occupied, and they would most  
10      likely room wire of require a variance from  
11      that provision.

12                   VICE CHAIR ALLEN:     And that has  
13      not been requested so far.

14                   MS. JESICK:        I do not believe  
15      so.           VICE CHAIR ALLEN:     Okay.    Thank  
16      you.

17                   CHAIRPERSON JORDAN:   But the way  
18      we normally proceed though, it's on the  
19      Applicant to get the requested relief, and  
20      if they don't and they get stopped leader,  
21      then it's at their own peril.

22                   Mr. Miller.

23                   MEMBER MILLER:    Thank you, Mr.

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1 CHAIRPERSON JORDAN: You said  
2 that under the new proposed zoning, the  
3 alley lot 5 wouldn't meet the new minimum.

4 What is the minimum under the new  
5 zoning?

6 MS. JESICK: I believe the lot  
7 requirement would stay the same for new lots  
8 in the in the R-4 zone, which would be 1,800  
9 square feet.

10 MEMBER MILLER: And this is,  
11 what? Nine hundred plus 500 plus 500 or  
12 something.

13 MS. JESICK: Nine seventy-one.

14 MEMBER MILLER: So it's almost --

15 MR. JESICK: Right. It's, yes,  
16 like half the required size.

17 Now, the ZRR, as Mr. Brown  
18 alluded to earlier, would permit a new alley  
19 dwelling in an existing, on an existing  
20 alley lot by special exception; so, lot 22,  
21 for example. The only minimum size there  
22 would be 450 square feet. So lot 22 does  
23 meet that proposed regulation that the  
24 zoning commission, as you know, hasn't

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1       adopted yet.               MEMBER MILLER:     right.  
2       Okay, thank you.

3                       CHAIRPERSON       JORDAN:               Any  
4       additional questions for the Planning Board?  
5                       Mr. Brown.

6               Questioning by Ms. Schmidt (cont'd)

7                       MR. BROWN:     Just quickly, Mr.  
8       Jesick, you mentioned the additional,  
9       potential additional relief for the rear  
10      yard, but in this case, unlike many cases,  
11      they're (off mic) by the proceeding based on  
12      zoning (off mic).

13                      So shouldn't we be entitled to  
14      rely on the Zoning Administrator's  
15      memorandum, despite details about the  
16      relief?

17                      MS. JESICK:    I think the Board  
18      stated correctly that you're preceding, you  
19      know, at your own risk. If there is  
20      additional relief that is discovered later,  
21      you may need to acquire that relief.

22                      I can't speak for the Department  
23      of Consumer and Regulatory Affairs as to  
24      what procedures they have in place regarding  
25      --

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1 CHAIRPERSON JORDAN: I guess he's  
2 saying, if between you and the Office of  
3 Zoning, then you can use this letter to say  
4 this is all I needed, and I got what you  
5 said. So basically what --

6 MS. JESICK: Yes.

7 CHAIRPERSON JORDAN: Thank you.

8 MEMBER MILLER: No further  
9 questions.

10 CHAIRPERSON JORDAN: Ms.  
11 Schmidt, examination of Mr. Jesick?

12 MS. SCHMIDT: No. Thank you very  
13 much.

14 CHAIRPERSON JORDAN: And then we  
15 would move to the office, the Department of  
16 Transportation, who -- there's no  
17 representative here. They previously  
18 submitted letter, I believe, so let me pull  
19 up my notes.

20 Yes, the Department of  
21 Transportation has indicated, no objection  
22 to the relief being requested.

23 Is there a representative here  
24 from ANC 6C who is authorized to speak for

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1       ANC?       I don't have that authorization  
2       letter.

3                   ANC 6C has voted in support of  
4       this application.

5                   Is there anyone here wishing to  
6       speak in support of this application?

7                   (No response.)

8                   CHAIRPERSON JORDAN:       Anyone  
9       wishing to speak?

10                  I know we already had one  
11       gentleman do so.

12                  Is there anyone wishing to speak  
13       in support?

14                  (No response.)

15                  CHAIRPERSON JORDAN:   Then let's  
16       turn now to the party in opposition, and  
17       hear their case. We'll put 40 minutes on  
18       the clock.

19                  MS. SCHMIDT:   Mr. Jordan, may I  
20       ask first, would you entertain a motion to  
21       strike those ANC and the Department of  
22       Transportation reports? Because, they were  
23       issued without being aware that there would  
24       be an encroachment in the alley of this gas  
25       meter that will interfere with, for example,

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1 Dr. and Mrs. Barasso getting out of their  
2 garage, and the Hollises.

3 That was not disclosed, so they,  
4 they made a report based on a plan that did  
5 not disclose this, these features.

6 CHAIRPERSON JORDAN: No.

7 And so, if that's your motion,  
8 it's going to be denied. It's not germane.  
9 Under the purpose of law, they are automatic  
10 parties and have the right to weigh in on  
11 these matters. And what they consider is  
12 for them to consider, and it's completely  
13 upon them.

14 So, your case, please.

15 MS. SCHMIDT: Thank you.

16 And just as a matter of format,  
17 there are many witnesses here that wish to  
18 testify, and I, it's my preference that they  
19 just free-form testify, as opposed to me  
20 questioning and putting on direct exam.

21 Do you any problem with that?

22 CHAIRPERSON JORDAN: So they're  
23 testifying. They're not providing  
24 statements and opposition, but they're going  
25 to be kind of fact witnesses for you.

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1 MS. SCHMIDT: They want to, they  
2 want to tell you how they feel, in essence,  
3 about this and how it will impact them.

4 CHAIRPERSON JORDAN: But we have  
5 a provision within our operation which --  
6 what would happen after you put on your  
7 case, they have an opportunity in opposition  
8 -- each person has a right, in opposition,  
9 for three minutes, to read any statement  
10 they want to read.

11 MS. SCHMIDT: Then that's what  
12 they want to do.

13 CHAIRPERSON JORDAN: Okay.

14 MS. SCHMIDT: Thank you.

15 MR. BROWN: Ms. Schmidt, do you  
16 want to set up --

17 CHAIRPERSON JORDAN: Yes, we do  
18 have --

19 MR. BROWN: -- do you want me to  
20 meet to pull one of these forward?

21 MS. SCHMIDT: Yes --

22 CHAIRPERSON JORDAN: Yes. Yes,  
23 we do have a --

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1 MS. SCHMIDT: That would be  
2 great. I'm not familiar with your set up  
3 here. Thank you.

4 CHAIRPERSON JORDAN: Thank you.

5 And Mr. Brown, can you put it so  
6 that the camera can get her, please? Right  
7 in front of -- yes.

8 (Whereupon, the parties engaged  
9 in off-mic conversation on the record.)

10 MS. SCHMIDT: I'm ready to go.

11 CHAIRPERSON JORDAN: Okay.

12 Closing argument.

13 MS. SCHMIDT: The FitzGerald case  
14 is smoke and mirrors. There are many  
15 material omissions that were not presented  
16 to the Board.

17 CHAIRPERSON JORDAN: You need to  
18 stay on the mic. Keep the mic by your face.

19 MS. SCHMIDT: Thank you.

20 CHAIRPERSON JORDAN: Okay.

21 MS. SCHMIDT: Mr. FitzGerald  
22 represents that they don't use these  
23 garages; there is no use.

24 I've lived next to these garages  
25 since 1996. This is a representative

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1 picture of what can be seen on a daily  
2 basis.

3 CHAIRPERSON JORDAN: Let me just  
4 caution you. As counsel, you're normally  
5 not going to be subjected to cross-  
6 examination --

7 MS. SCHMIDT: I know; I'm  
8 supposed to be doing an opening. Okay.

9 MS. SCHMIDT: The evidence --

10 CHAIRPERSON JORDAN: Ms. Schmidt,  
11 will you let me finish talking just a little  
12 bit, please.

13 MS. SCHMIDT: I'm sorry. Thanks.

14 CHAIRPERSON JORDAN: When you  
15 make the statements "I" and "I know," you're  
16 subjecting yourself to cross-examination,  
17 and I just want you to know that for the  
18 record; okay?

19 MS. SCHMIDT: Thank you

20 MS. SCHMIDT: These pictures  
21 depict FitzGerald's use of the property.  
22 Witnesses here will testify today that this  
23 is a routine site that has been going on at  
24 the FitzGerald garages since the 1990s, that  
25 these garages are used for storage. The

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1 witnesses have first-hand knowledge; they  
2 see this every day.

3 This picture here, people will  
4 testify, is a routine sight of somebody  
5 going in and out of the garage, that they  
6 have seen the open doors, and the property  
7 is currently being used as a storage.

8 The witnesses will testify that  
9 there is no true economic hardship, that  
10 there is income-producing units on 319 A,  
11 which is behind this garage, which the  
12 Office of Zoning has indicated is part of  
13 319 A. Those garages then provide parking  
14 for 319 A, regardless of whether or not Mr.  
15 FitzGerald actually uses them for parking.

16 The neighbors will testify that  
17 providing 100-percent lot coverage, which  
18 they request, will create a problem with  
19 more garbage cans in the alleys. And the  
20 DPW regulations require homeowners to pull  
21 their parking -- excuse me -- their garage,  
22 their garbage cans onto their own  
23 properties. There's no property to do this.

24 Neighbors will testify that for  
25 years, FitzGerald the taken the position

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1       that they're entitled to park in front of  
2       those garages and that when it becomes a  
3       Miller's Court address that they will have  
4       parking as a matter of right on the court.  
5       And neighbors -- for example, Mr. Hollis --  
6       will testify that that, along with the  
7       proposed gas meter to go right there, will  
8       impact his ability and that of Dr. Barasso,  
9       to get out of their garage.

10               They will testify that this is  
11       like dropping a hotel down in the middle of  
12       an alley that's used as a thoroughfare. Mr.  
13       Hollis will testify that narrowing of this  
14       thoroughfare would affect his property. He  
15       will give you the example of when his  
16       carriage house started on fire about five  
17       years ago, that the fire department had to  
18       come through the valley come to that alley.

19               Other neighbors will similarly  
20       testify about the impact that it will on  
21       their life and the ability to navigate the  
22       alley.

23               Thank you very much.

24               CHAIRPERSON JORDAN: Let me offer  
25       this for the sake of expediency: I think,

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1 in regards to testimony about the garage  
2 being used as storage, I think that's been  
3 admitted in the record already.

4 Isn't that right, Counsel, that  
5 the garages are being used for storage?

6 MR. BROWN: Yes.

7 CHAIRPERSON JORDAN: Yes, they've  
8 already admitted that, so we already have  
9 that as an admission. So I just want to  
10 make sure you --

11 MS. SCHMIDT: I, I think what  
12 you'll hear from the neighbors is they're  
13 using it to operate and manage their  
14 multiple real estate.

15 CHAIRPERSON JORDAN: Well, that  
16 was different. you said "storage." I just  
17 wanted you to --

18 MS. SCHMIDT: Thank you.

19 I call John Hollis.

20 CHAIRPERSON JORDAN: Stay where  
21 you are, please, if you're --

22 MR. HOLLIS: I wanted to use one  
23 chart there just --

24 CHAIRPERSON JORDAN: Okay, then  
25 you're going to need use a wireless mic.

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1 MR. HOLLIS: Is this on? Okay.

2 Testimony by John Hollis

3 MR. HOLLIS: I'm John Hollis, the  
4 owner of 325 and 327 A Street, which is this  
5 property here and this property here.

6 CHAIRPERSON JORDAN: We have a  
7 pointer.

8 Mr. Moy, don't we have a pointer?

9 You can get that pointer, and you  
10 can sit down if you want, or you can stand  
11 up -- either way.

12 MR. HOLLIS: Is this on? Okay.

13 Testimony of John Hollis(cont'd)

14 MR. HOLLIS: My remarks will be  
15 kind of brief because Ms. Schmidt has really  
16 covered so many, so, so many factors that  
17 are relevant to this, and the other  
18 homeowners on, on the block will also add to  
19 that.

20 I, I have only one prospective  
21 that I don't think anybody, luckily, has,  
22 and that's that I was personally involved a  
23 fire that -- and I will just try to give you  
24 my an idea of why our main concern is fire  
25 safety, notwithstanding the Fraser's fire

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1 recently, which I think brought home to so  
2 many people on Capitol Hill what can happen  
3 when this issue isn't addressed and people  
4 lose sight of that.

5 About five years ago, my carriage  
6 house, which is right here had a fire  
7 started by some vagrants or something with  
8 trash in the alley, and there was parking  
9 here. People parked here, and they actually  
10 parked here as well. And when the fire  
11 equipment tried to access the back here,  
12 where the smoke was coming from, their only  
13 option was to come down this narrow, 10-  
14 foot-wide alley here, which serves Fourth  
15 Street.

16 Now, it's my understanding that  
17 during this construction period, this alley  
18 will be completely ripped up because that's  
19 the only way that the proposed development  
20 will be able to access sewer line, is by  
21 coming down this alley. So, for however  
22 long that is impacted, that will, that will  
23 cut off a potential access, which, you have  
24 to understand, serves the entire quarter of  
25 a block in terms of all of these structures

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1 back here, including -- Grubb's Pharmacy,  
2 particularly, is a wood structure. They  
3 are, they are an old historic business will.  
4 They're, they're, they're wood. I mean it  
5 go. All of these units back here have wood  
6 fences; they have wood porches. So there is  
7 a very, very pressing need for fire  
8 equipment to be able to get to the back of  
9 these units to fight fire, as opposed to the  
10 front of the units.

11 And again, I have a personal  
12 perspective of that having been the case  
13 because the fire truck had to come down this  
14 narrow alley to fight this fire here. They  
15 were great at it, and if they hadn't done  
16 it, the whole thing could have caught on  
17 fire and potentially spread to the other two  
18 units.

19 CHAIRPERSON JORDAN: Now, you're  
20 saying that if there's -- let's assume that  
21 the Board gave permission and authority to  
22 put in the dwellings on the alley --

23 MR. HOLLIS: Right.

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1                   CHAIRPERSON   JORDAN:       --   that  
2   after the dwellings are complete, that alley  
3   is going to be blocked.

4                   MR. HOLLIS:   No.

5                   During the construction, we --

6                   CHAIRPERSON   JORDAN:       We   can't  
7   consider construction issues --

8                   MR. HOLLIS:   Right.   Right.

9                   CHAIRPERSON   JORDAN:       --   before  
10   this Board, so I want to let you know that.

11                  MR. HOLLIS:    I   understand,   as  
12   opposed to zoning issues.   Right.

13                  CHAIRPERSON   JORDAN:       So I'm just  
14   trying to understand --

15                  (Whereupon, the parties engaged  
16   in simultaneous conversation.)

17                  MR. HOLLIS:   Is this on?   Okay.

18                  Testimony of John Hollis (cont'd)

19                  MR. HOLLIS:   So, and even without  
20   that, even without that particular necessity  
21   here, the, the situation will continue to  
22   exist as, if any additional parking is  
23   continued, is put in here, and is allowed to  
24   -- right now, the reason there might not be  
25   any parking is because the little lady with

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1 the ticket book sometimes comes down this  
2 alley and zaps people parked back here  
3 because I think they understand the  
4 necessity to keep this thing open.

5 But absent that, and on the  
6 weekends when there is no parking  
7 enforcement, you could have some real  
8 problems if you make this more congested.

9 I think that's really the --

10 MS. SCHMIDT: Are you testifying  
11 that there is parking going on in front of  
12 those garages on the FitzGerald's --

13 MR. HOLLIS: I've lived here for  
14 30 years, and there's never been a day --  
15 even on the weekends -- when there hasn't  
16 been two trucks parked out here doing  
17 something.

18 CHAIRPERSON JORDAN: Is it legal  
19 parking back there?

20 MR. HOLLIS: They have a sign up  
21 that says, "No parking", but nobody ever  
22 tickets if you're parked here. I don't know  
23 why.

24 CHAIRPERSON JORDAN: Okay.

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1                   MR. HOLLIS: I think they've got  
2                   some kind of arrangement with the parking  
3                   lady, saying, no, no, we're okay to park  
4                   here; no problem.

5                   I think, maybe because people  
6                   park in front of these other two, that it's  
7                   just assumed that you can park here, but  
8                   it's just what people do. And to put  
9                   permanent residence in here who have 1.9  
10                  cars per, per family on the Hill, I just  
11                  think you're going to end up with more cars  
12                  than you can handle, and it can potentially  
13                  be a problem.

14                  That's really all I wanted to  
15                  say. I'll give my time over to anybody  
16                  else.

17                  CHAIRPERSON JORDAN: Well, let me  
18                  see.

19                  Mr. Brown, do you want to cross-  
20                  examine this witness?

21                  MR. BROWN: No.

22                  CHAIRPERSON JORDAN: Okay, thank  
23                  you.

24                  You're next, please.

25                  MS. SCHMIDT: Just --

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1                   Questioning by Ms. Schmidt (cont'd)

2                   MS. SCHMIDT: Mr. Hollis, are you  
3 aware of a no-parking, a no-parking sign  
4 that's, a no-parking sign that's located on  
5 the telephone pole.

6                   MR. HOLLIS: Right.

7                   MS. SCHMIDT: Do you know who put  
8 that there?

9                   MR. HOLLIS: No, I don't.

10                  MS. SCHMIDT: Do you know if it's  
11 an official DC sign?

12                  MR. HOLLIS: I believe it is.

13                  MS. SCHMIDT: Are you aware of  
14 parking in front of properties owned on  
15 Miller's Court by the Stansburys?

16                  MR. HOLLIS: Now let me make sure  
17 I'm correct here, so, for the Board. When  
18 you say "the Stansburys," are you talking  
19 about --

20                  CHAIRPERSON JORDAN: Can you  
21 repeat the question, please?

22                  Questioning by Ms. Schmidt (cont'd)

23                  MS. SCHMIDT: Are you familiar  
24 with parallel parking that goes on in front

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1 of the three carriage houses owned by Brian  
2 Stansbury?

3 MR. HOLLIS: Sure. Right.  
4 There's continuous parking there, all the  
5 time.

6 MS. SCHMIDT: Have you ever, has  
7 Mr. Stansbury ever told you, or anyone ever  
8 told you, that there's parking as a matter  
9 of right there because they're on Miller's  
10 Court, his own court?

11 MR. HOLLIS: I, I know that I've  
12 heard him -- he's told me personally that  
13 that's how he is able to sell these -- or,  
14 to rent these -- units because he can offer  
15 parking.

16 That's, you know, that's what  
17 makes these units favorable, and if he lost  
18 his parking, he would be lost to even try to  
19 rent them.

20 MS. SCHMIDT: And, and you signed  
21 a motion this morning in opposition, asking  
22 the Department of Transportation to look  
23 into whether or not proposed construction  
24 here would create legal parking in front of  
25 these two FitzGerald garages.

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1                   MR. HOLLIS:   Yes.   Yes, and that  
2                   also, along -- I would like to see the, the  
3                   fire department take a look at this, too,  
4                   and just see what they think, as far as, as  
5                   congestion and, and difficulty in, in  
6                   fighting fires.

7                   MS. SCHMIDT:   And over the years  
8                   that you've lived at your house, have you  
9                   seen -- other than parking -- have you seen  
10                  items stored in the garage and, and that,  
11                  and for example, a wood shop of some sort --

12                  MR. HOLLIS:   Yes, certainly.

13                  MS. SCHMIDT:   -- operated out of  
14                  one of the garages?

15                  MR. HOLLIS:   Well, certainly.  
16                  It's a workshop because they service all of  
17                  the rental units. I mean it, you will find  
18                  -- on a daily basis, you would see air-  
19                  conditioning units there, and, you know,  
20                  washers, dryers, that were being, obviously,  
21                  stored and repaired and all.

22                  And I mean I've been in, I've  
23                  lived here for 30 years. I've always been a  
24                  good neighbor. No one would like to see  
25                  these ugly things be done something with

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1 more than me. Every time I back out of my  
2 garage, I see it day after day after day.

3 MS. SCHMIDT: Well, could that be  
4 done by renovating the garages?

5 MR. HOLLIS: Of course, and I  
6 mean these are people who do that for a  
7 business; they fix them.

8 MS. SCHMIDT: Are you aware, do  
9 you have knowledge of FitzGerald owning  
10 several rental dwellings in block -- excuse  
11 me -- square 786?

12 MR. HOLLIS: Well, sure.

13 And as far as the economic value  
14 of these garages, my God, if they had had to  
15 pay rental for these garages some other  
16 place, I mean, over 50 years, I can't even  
17 imagine how much money they saved by having  
18 those, which, I think there's an economic  
19 value to them.

20 MS. SCHMIDT: Do you know how  
21 many buildings they own on Lot 786, that the  
22 rent?

23 MR. HOLLIS: No. No, I don't.

24 MS. SCHMIDT: More than two?

25 MR. HOLLIS: Oh, by far.

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1 MS. SCHMIDT: More than three?

2 MR. BROWN: Mr. Chairman --

3 CHAIRPERSON JORDAN: Yeah, I

4 don't -- I agree, sir.

5 Let's --

6 MS. SCHMIDT: I'm just trying to

7 show that they're using this to benefit the

8 other rental buildings they have on the

9 block. They're operating their maintenance

10 workshop out of it for their line of

11 business, which is property management and

12 rental.

13 CHAIRPERSON JORDAN: Let me ask

14 you a question. When you've been proffering

15 this argument about using the garage as

16 storage, what is your basis? What are you

17 trying to show by that?

18 MS. SCHMIDT: They're storing

19 items -- for example, washers and dryers,

20 paints --

21 CHAIRPERSON JORDAN: How does

22 that go towards the variance test and the

23 question of relief?

24 MS. SCHMIDT: There's an

25 economic, there's an economic value because

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1       they operate their property management for  
2       the dwellings they own on Capitol Hill and  
3       DC out of those two buildings.

4                   CHAIRPERSON JORDAN:     And you're  
5       saying there's a value to that.

6                   MS. SCHMIDT:     There's a value to  
7       that.

8                   CHAIRPERSON JORDAN:     And you're  
9       saying that's a legal use, that they have a  
10      value out of the use of the property --

11                  MS. SCHMIDT:     Yes.

12                  CHAIRPERSON JORDAN:     -- because  
13      it's storage.

14                  MS.     SCHMIDT:           Because it's  
15      storage and they operate their maintenance  
16      function of their property management  
17      company from that location.

18                  MR. HOLLIS:     I'm not even sure  
19      about -- (off mic.)

20                  CHAIRPERSON JORDAN:     Make sure  
21      your microphone is on, please.

22                  MR. HOLLIS:     Okay.

23                         I'm not even sure about how legal  
24      it is. I think, if the fire department or -  
25      -

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1 CHAIRPERSON JORDAN: And that's  
2 my issue. We're really borderline on  
3 whether there's a relevant line of dialogue  
4 that we continually go. That's why I asked  
5 you that question.

6 MS. SCHMIDT: I guess what I  
7 would like to do is -- you've asked him to  
8 provide capitalization numbers, and I would  
9 like to be able to respond to that because -  
10 -

11 CHAIRPERSON JORDAN: We're not at  
12 that point yet.

13 If you would --

14 MS. SCHMIDT: I understand -- but  
15 in briefing, respond to the value issue and  
16 what benefit they get from it --

17 CHAIRPERSON JORDAN: Certainly,  
18 and --

19 MS. SCHMIDT: -- and the cost of  
20 repair, et cetera.

21 CHAIRPERSON JORDAN: That's what  
22 we usually do.

23 MS. SCHMIDT: Thank you very  
24 much.

25 CHAIRPERSON JORDAN: Okay.

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1 MS. SCHMIDT: I call Chris Nolde.

2 MR. NOLDE: Is this on?

3 CHAIRPERSON JORDAN: Yes, you're  
4 on it.

5 Testimony of Chris Nolde

6 MR. NOLDE: Thank you, Mr.  
7 Chairman and members of the Board. My name  
8 is Chris Nolde, owner of 313 A Street,  
9 Northeast, where I've lived for more than 35  
10 -- 40 -- years.

11 You've covered my first point, I  
12 think, Mr. Chairman, that was, that in the  
13 Applicant's first application that was dated  
14 in, in August of 2013, they, they admitted -  
15 - I'm sorry to say that word -- but they  
16 said the garages were currently used to, for  
17 storage. Then, when they submitted the  
18 final application to the BZA in October,  
19 those words disappeared, and they said  
20 they're vacant and not suitable for storage.  
21 That is their final statement: "Not  
22 suitable for storage, while we neighbors  
23 have observed the storage for so long, and  
24 it's still continuing today.

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1                   So I appreciated your estimate  
2                   and having him to, admitting this. I didn't  
3                   quite hear a firm 'yes, we are currently  
4                   using it for storage' because I think  
5                   they're denying it, at least in their  
6                   statement, their final statement to, to the  
7                   BZA in October of 2013.

8                   They're saying they're used for  
9                   storage. I think Ms. Schmidt made a good  
10                  point about, well, it shows economic value,  
11                  and they have a legitimate, permitted  
12                  purpose to use these garages. Even though  
13                  they are decrepit and we've watched them  
14                  decline for so long and have been frustrated  
15                  by it, they've still got economic uses under  
16                  the zoning code presently.

17                  Second, the ANC heard from only  
18                  two property owners when they met on this  
19                  subject. One still supports the  
20                  application. The other, Mr. Stansbury, who  
21                  has property there -- he doesn't actually  
22                  live there -- originally offered "guarded"  
23                  support. Later, he opposed it, and I think  
24                  his lawyer submitted a very fine brief  
25                  pointing out the flaws in their application.

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1 More recently -- indeed, just by 7:00 a.m.  
2 this morning or later, he's now neutral.  
3 He's not supporting it; he's not opposing  
4 it.

5 So we're saying, out of more than  
6 65 property owners in our neighborhood, they  
7 got one. Now, he may have some more since,  
8 but at the time of the ANC meeting, they had  
9 one plus another property owner who doesn't  
10 live there. He has an economic interest, no  
11 question. No question, his, his tenants are  
12 going to be affected by this.

13 But we're upset that ANC didn't  
14 hear us, they shouldn't speak for us, and we  
15 believe -- excuse me -- their letter  
16 supporting the application should not be  
17 given great weight.

18 My wife and I are retired  
19 citizens and do not have a zoning lawyer to  
20 argue the legal points, but it seems to us  
21 that every hardship and exceptional  
22 circumstance was caused by the Applicants  
23 themselves. We emphasize the bad example  
24 that would be set if such decades-long  
25 deterioration by neglect the we have seen

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1 would be allowed to form the basis, the very  
2 basis, for this variance, a piled on  
3 variance, from existing zoning regulations.

4 Of course, we commend the Office  
5 of Planning's report and analysis  
6 recommending denial.

7 We feel passionately about our  
8 neighborhood in which we lived and have 40  
9 years invested, and believe alleys provide a  
10 quality of urban life based on current uses.  
11 We have planning of density in our square  
12 already and hope you will deny the  
13 Applicant's variance.

14 Thank you so much.

15 CHAIRPERSON JORDAN: Thank you  
16 for your time and testimony.

17 Are there any additional  
18 questions you want to ask Mr. --

19 MS. SCHMIDT: I have some  
20 questions.

21 CHAIRPERSON JORDAN: While you're  
22 going that way, take a wireless mic with you  
23 please. Thank you. Chris. As her  
24 microphone please?

25 Questioning by Ms. Schmidt (cont'd)

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1 MS. SCHMIDT: Mr. Nolde, do you  
2 recognize this ballot?

3 MR. NOLDE: I do. I'm not sure -  
4 - the top picture -- if you could point to  
5 where the subject application property is,  
6 I'll make sure.

7 MS. SCHMIDT: This is the old  
8 stable.

9 CHAIRPERSON JORDAN: You're  
10 blocking the television camera, so maybe  
11 standing on the other side might be helpful.

12 MS. SCHMIDT: Thank you.

13 CHAIRPERSON JORDAN: Thank you.

14 Questioning by Ms. Schmidt (cont'd)

15 MS. SCHMIDT: This is the old  
16 stable here.

17 MR. NOLDE: Okay, and so the A  
18 Street alley goes off to the other side of  
19 that first vehicle.

20 MS. SCHMIDT: Yes.

21 MR. NOLDE: Got it.

22 MS. SCHMIDT: And this is between  
23 the John --

24 MR. NOLDE: That's the Stansbury.

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1 MS. SCHMIDT: No, this is not the  
2 Stansbury -- John Jay apartment building.

3 MR. NOLDE: I'm sorry; who --

4 MS. SCHMIDT: Why don't you come  
5 closer for the picture to take a look.

6 MR. NOLDE: I'm sorry to take  
7 this time, Mr. Chairman.

8 CHAIRPERSON JORDAN: Counsel, we  
9 keep going back and forth between giving  
10 testimony and asking questions.

11 Questioning by Ms. Schmidt (cont'd)

12 MS. SCHMIDT: Do you see that  
13 picture there?

14 MR. NOLDE: Okay.

15 MS. SCHMIDT: Does it -- would  
16 you agree that these are, these cars are not  
17 legally parked?

18 MR. NOLDE: I would.

19 MS. SCHMIDT: Does that depict  
20 what the alley normally looks like on a  
21 regular basis?

22 MR. NOLDE: Very typical.

23 MS. SCHMIDT: Do you see these  
24 garbage cans? Did you --

25 MR. NOLDE: Yes, I do.

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1 MS. SCHMIDT: Is that how the  
2 alley looks at routinely?

3 MR. NOLDE: That's --

4 CHAIRPERSON JORDAN: Use the  
5 microphone.

6 MR. NOLDE: -- as bad or worse.

7 CHAIRPERSON JORDAN: Okay.

8 Questioning by Ms. Schmidt (cont'd)

9 MS. SCHMIDT: Are you aware of a  
10 DC law that required owners of property to  
11 pull the garbage cans back?

12 MR. NOLDE: I am. I'm trying to  
13 comply with it.

14 MS. SCHMIDT: Would you, is it  
15 fair to say that most people don't comply?

16 MR. NOLDE: (Off mic.)

17 MS. SCHMIDT: Do you feel that  
18 there will be, or believe that there will  
19 be, greater problems getting through the  
20 alley when there are two more garbage cans -  
21 -

22 MR. NOLDE: Yes.

23 MS. SCHMIDT: -- added?

24 MR. NOLDE: Yes.

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1 CHAIRPERSON JORDAN: You need to  
2 show share the microphone if you're both  
3 going to stand up.

4 MR. NOLDE: Oh, I'm sorry; yes,  
5 Mr. Chairman. Sorry about that.

6 Questioning by Ms. Schmidt (cont'd)

7 MS. SCHMIDT: And in the present  
8 FitzGerald plan with 100-percent lot  
9 coverage, where would they put their garbage  
10 cans?

11 MR. NOLDE: I can't see any place  
12 where they can put it. That, that footprint  
13 of their property is going to be on 100  
14 percent of the lot. Where could it go?

15 MS. SCHMIDT: You were, you were  
16 --

17 MR. BROWN: Mr. Chairman?

18 CHAIRPERSON JORDAN: Yes?

19 MR. BROWN: One, I'm so sure how  
20 relevant this is.

21 But also, Mr. FitzGerald has  
22 justified when we went through the site plan  
23 that there's space inside the garage that  
24 he's proposing for the garbage cans to go,  
25 so --

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1 CHAIRPERSON JORDAN: Well, wait.  
2 There's a couple of things. One, it's  
3 borderline starting to get to relevant --  
4 earlier questions weren't relevant --  
5 starting to get to it. And what Mr.  
6 FitzGerald testified to, if it's different  
7 than what's being said, it's certainly in  
8 your redirect.

9 MR. BROWN: Sure.

10 Questioning by Ms. Schmidt (cont'd)

11 MS. SCHMIDT: Mr. Nolde, were you  
12 present at neighborhood meetings with Mr.  
13 FitzGerald?

14 MR. NOLDE: Yes.

15 MS. SCHMIDT: And at those  
16 meetings, isn't it true that Mr. FitzGerald  
17 declined to put the gas meter in the garage  
18 because it would take the garage for the  
19 meter?

20 MR. NOLDE: I believe that's  
21 true. I think we asked if you could, and he  
22 said, well, we have no plans to do that.

23 MS. SCHMIDT: And wasn't, isn't  
24 that the case that that because that was

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1       because it would make it impossible to  
2       Parker vehicle in the garage?

3                   MR. NOLDE:   A believe so.

4                   MS. SCHMIDT:   I have no further  
5       questions.

6                   CHAIRPERSON JORDAN:   Any cross,  
7       please?

8                   MR. BROWN:   No.

9                   CHAIRPERSON JORDAN:   Okay.  
10       Your next witness, or?

11                   MS. SCHMIDT:   I call Sue Clain.

12                   (Whereupon, the parties engaged  
13       in off-mic discussion on the record.)

14                   CHAIRPERSON JORDAN:   Do you need  
15       a copy? You can take mine.

16                   MS. SCHMIDT:   Here it is.   I  
17       apologize.

18                   Testimony of Sue Clain

19                   MS. CLAIN:       Thank you, Mr.  
20       Chairman and members of the Board. I'm not  
21       a lawyer. I didn't bring any motions. But  
22       I am a concerned neighbor who's lived in the  
23       neighborhood for 30 years, and I'll try and  
24       move through this fairly quickly.

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1 I don't know a lot about zoning.  
2 I haven't been before the Board before. But  
3 I believe zoning does serve an important  
4 purpose. Neighborhoods like Capitol Hill  
5 are very crowded. We've got lots of  
6 buildings, lots of people, lots of vehicles  
7 all crammed together. By my most recent  
8 look at the DC tax and revenue real property  
9 tax assessment database, Lot 786 shows 22  
10 row houses, 17 multi-unit apartment  
11 buildings that vary between three and  
12 probably over 20 units, three condominium  
13 buildings with a total of 22 residential  
14 units, and very little parking.

15 Everyone wants to use and enjoy  
16 their property, and personally, I have no  
17 objection to anybody doing that, whether  
18 they're a corporation or an individual,  
19 including profiting from it if and so long  
20 as it does not infringe upon my rights and  
21 the rights of my neighbors to do the same.

22 The zoning requirements and the  
23 bodies, such as this Board, that implement  
24 them provide a predictable and hopefully it  
25 fair way to protect and balance competing

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1 interests and reduce conflicts. When a new  
2 property use is proposed, particularly one  
3 that does not conform with zoning  
4 requirements, not only the applicant's  
5 interest in the change but the interests of  
6 a potential impact on neighbors with long-  
7 standing legal uses of their properties, I  
8 believe, should be weighed in that balance  
9 also.

10 Moving on to the next slide,  
11 parking in our Miller's Court area is  
12 already very limited and congested, and for  
13 the nine parking spaces behind the Concord,  
14 the 310 East Capitol Street building, we  
15 already have problems.

16 (Off mic.)

17 CHAIRPERSON JORDAN: Push the  
18 button again.

19 MS. CLAIN: Is this working?

20 CHAIRPERSON JORDAN: Yes.

21 MS. CLAIN: Okay.

22 Testimony of Sue Clain (cont'd)

23 MS. CLAIN: Just for your  
24 reference, our condo building is this  
25 building here. Our parking spaces are here.

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1 My particular parking spaces -- I own two --  
2 are the one directly here, which is 12 yards  
3 from the new property , and the one just in  
4 from the alley way here.

5 CHAIRPERSON JORDAN: Is that  
6 surface parking there?

7 MS. CLAIN: Surface parking; yes,  
8 sir.

9 CHAIRPERSON JORDAN: Is it just  
10 open?

11 MS. CLAIN: It's just open paved  
12 Macadam with lines marked.

13 CHAIRPERSON JORDAN: Okay. Thank  
14 you.

15 Testimony of Sue Clain (cont'd)

16 MS. CLAIN: We have continual  
17 problems with other vehicles trespassing on  
18 our spaces, either parking on our spaces or  
19 otherwise blocking them.

20 One example among many is that  
21 right before the first proceeding on October  
22 31, a man identifying his office from  
23 FitzGerald properties pulled to one of our  
24 spaces that happened to be vacant at the  
25 moment, as I was leaving for work. When I

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1 told him he couldn't park there, he refused  
2 to move, and I had to leave and leave him  
3 there. Who knows how many other times  
4 FitzGerald people have parked there when I  
5 was at work and couldn't see them, but they  
6 are certainly not the only, the only people  
7 who trespass.

8 Our parking space owners, their  
9 guests, their contractors and other  
10 authorized individuals, already have these  
11 kinds of difficulties. We struggle with it  
12 all the time, and other neighbors have  
13 reported similar problems.

14 Moving on to the next slide,  
15 standing under that restricted parking sign  
16 that we have in big red letters on the back  
17 of our building, if you look westbound, you  
18 see the, two photographs that show the kinds  
19 of examples of legal parking where we have  
20 to jockey around each other.

21 When I looked at the assessment  
22 database and counted up all those buildings  
23 that I told you about, I'm estimating  
24 conservatively, there are over 200 people  
25 living in square 786. Now, not all of them

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1 have cars, but that's a lot of people and a  
2 lot of vehicles jockeying around, even  
3 through the legal spaces.

4 Moving along to my next one, as I  
5 showed you on the map, our Concord parking  
6 spaces are located very close to the subject  
7 property. My space, my spaces are spaces 4  
8 and 6, as I showed you, which are -- the  
9 closest one is located only 12 yards away.  
10 The one next to me and the one in front of  
11 me, the four closest to that building,  
12 closest to the alley, are the ones likely to  
13 be impacted the most, though all of our  
14 parking spaces have these similar problems.

15 I think it's highly unlikely if,  
16 as FitzGerald Properties has noted, if they  
17 sell this place with three bedrooms, two and  
18 a half baths, 1,900 square feet. It's  
19 unlikely, somebody buying that for close to  
20 \$1 million who's going to have only one car.  
21 So, if they're only providing one garage  
22 space, where are the other vehicles going to  
23 go for the residents, let alone their  
24 contractors and their guests?

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1                   I submit to you, based on 30  
2       years of living there, that they're not  
3       going to circle 10 blocks around and hoof it  
4       back in their Farragamos; they're going to  
5       park in my spaces if they see them empty, or  
6       my neighbors' spaces.

7                   Now, I am in my mid-60s. I have  
8       health problems sufficient that the DC  
9       Government has issued a handicapped permit.  
10      That doesn't do me any good if somebody is  
11      in my private parking space, and it doesn't  
12      do me any good on the residential streets.  
13      So, and the other spaces that are closest  
14      there: One is owned by a woman in her 70s  
15      who also has mobility problems, and the  
16      other is owned by Congressman Hall, who's in  
17      his 90s. When he comes back for a visit to  
18      the District late at night with a suitcase,  
19      he can't circle the block and be carrying a  
20      suit case back if somebody is poaching on  
21      his spot. So it's not just an inconvenience  
22      if somebody's parking on our spaces; it's a  
23      personal hardship for us.

24                  For those of us, like myself and  
25      others, who rent out our spaces during the

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1 weekday, it's also an economic hardship  
2 because our, our renters are not going to  
3 continue to rent from us if people blocking  
4 our spaces. And, you know, the FitzGerald  
5 property --

6 CHAIRPERSON JORDAN: How much do  
7 you rent your space for?

8 MS. CLAIN: I rent mine for \$225  
9 -- the two -- \$225 a month each because this  
10 is a long-standing renter who's been very  
11 prompt in payment.

12 In recent years, I've rented them  
13 individually for \$250 a month. And this is  
14 for just weekday parking; you know, not  
15 holidays, not weekend, not evenings. If I  
16 were renting them 24/7, I could get more.  
17 Certainly, if it was an enclosed garage  
18 where the car was protected and you could  
19 store other items, you could get much more.  
20 I think the \$400 estimate a month that they  
21 suggested might be on the low side; it might  
22 be somewhat higher. That's just my opinion.

23 Testimony of Sue Clain (cont'd)

24 MS. CLAIN: Anyway, I am  
25 concerned that, you know, while certainly,

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1 the FitzGerald economic impact should be  
2 considered, economic impact on us, even if  
3 it's more modest, should also be considered  
4 because I need that money to pay my  
5 utilities, to be perfectly honest, and when  
6 retire shortly, that income is, is part of  
7 what I'm counting on, and I can't have it  
8 disrupted because we've got a \$1 million  
9 property that thinks they are entitled to  
10 poach on our spaces.

11 I'll flip quickly through the  
12 next slide, which shows a UPS truck parked  
13 in the alley, the portion that goes from  
14 Miller's Court towards A Street. It clearly  
15 shows that only one car can go there and  
16 can't get by.

17 And my main point in showing it  
18 is that the current renters in FitzGerald's  
19 property, 319, frequently illegally park  
20 their vehicles there to load or unload, or  
21 sometimes they leave them there for an  
22 extended period, which block myself and  
23 others, including my renters, from getting  
24 an amount.

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1                   Now, moving along, the, the  
2       Office of Planning and other witnesses have  
3       addressed the fact that the Applicant  
4       doesn't really meet the three-part test for  
5       granting a request of variance, that the  
6       kinds of features that they say are unique  
7       or extraordinary or exceptional are really  
8       typical of Capitol Hill alleyways.

9                   And I find it really odd that  
10      they are making such a big deal about  
11      deteriorated condition of the garages, which  
12      they say makes them unique and extraordinary  
13      when they also say that they've owned them  
14      since the 1960s, for over 50 years.  
15      Certainly, we have all seen their employees  
16      regularly visit and use them overlap 30-plus  
17      years. And the FitzGerald website touts  
18      that they have a maintenance company  
19      subsidiary that, that could clearly do  
20      maintenance or repair or even, even  
21      reconstruction.

22                  So I don't know how allowing the  
23      garages to deteriorate over 50 years, which  
24      creates the very conditions they now deplore  
25      and cite as justification, why --

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1       essentially, I think it's called 'demolition  
2       by neglect' -- should be rewarded with a  
3       variance. It just, it just boggles the  
4       mind.

5                   And I suppose they think that,  
6       you know, because they allowed to  
7       deteriorate, that the DC Government and the  
8       neighbors have no choice but to accept  
9       whatever they want. Well, hopefully we do  
10      have a choice. Hopefully, you will protect  
11      and balance what's reasonable, and there are  
12      other choices.

13                   And on the third test in  
14      particular, about substantial detriment to  
15      the public good, they, they say, "There will  
16      be substantial benefits without negative  
17      impacts on the surrounding properties."  
18      That's a quote from page 9 of their  
19      prehearing statement.

20                   They also say, "Nor will the  
21      project have any effect on any other  
22      properties within the square." Well, I've  
23      just talked about some of the impacts my  
24      other neighbors have and will talk about  
25      those impacts. There don't really seem to

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1 be any benefits to anyone other than the  
2 Applicant, which is to be considered, but  
3 not the only thing to be considered.

4 We are not lacking in million-  
5 dollar residential family homes on Capitol  
6 Hill. We are lacking parking and storage.  
7 I have people stop me on the street asking  
8 for parking. We see notices tacked to  
9 trees. We have notices slipped under our  
10 doorway seeking parking. The condo building  
11 where I live and the one next door, have  
12 residents on every floor; we have no storage  
13 units. We would pay a premium, and certain  
14 certainly, other neighbors in the  
15 neighborhood would probably pay a premium,  
16 if there were even storage lockers or, you  
17 know, dividing cages or whatever.

18 So the Board has, has asked about  
19 other uses. Well, certainly, I find it hard  
20 to believe that if, if there were a three,  
21 a, a joining of the two property pieces, as  
22 FitzGerald suggests, that they couldn't  
23 somehow get three parking spaces there,  
24 three garage spaces, or parking and storage,  
25 or parking and build a second level of

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1 storage above, or, as I suggested -- and I  
2 suggested some of these options at meeting  
3 number two we had with them -- or, instead  
4 of having one garage parking space and  
5 living quarters on the ground level and then  
6 additional living on the top, if they  
7 couldn't have two garage parking spaces and  
8 then living quarters above it.

9           They could, maybe it wouldn't be  
10 a three-bedroom apartment; you could  
11 probably have a two-bedroom apartment and  
12 then to parking spaces, which would more  
13 nearly balance the number of residents and  
14 the number of cars they're likely to have.  
15 It still wouldn't cover their, their  
16 contractors or guests, but at least it would  
17 relieve some of the congestion and would  
18 certainly provide a range of economic  
19 benefits.

20           Now, Mr. FitzGerald, when I  
21 pulled those suggestions, both at meeting  
22 two and in our previous discussion here,  
23 rejected them out of hand as they would not  
24 maximize his profit, which -- you know, they  
25 probably wouldn't maximize his profit. But

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1 it would be a way of balancing the equities  
2 and the concerns and the issues which he  
3 seemed unwilling to entertain.

4 We did try to resolve this  
5 informally. I was, my health conditions did  
6 not permit me to attend all of the meetings.  
7 I did attend meeting two. But the Applicant  
8 was willing to construction practices, which  
9 is sort of a temporary issue. I offered  
10 something that I thought they would find of  
11 value, that we might be willing to entertain  
12 longer construction hours in exchange for  
13 quicker completion of the project.

14 And I noticed in subsequent  
15 documents they shared with us, they were  
16 quick to hop on the longer hours, but  
17 instead of giving longer hours and shorter  
18 completion, we got longer hours and longer  
19 completion, and the completion got longer  
20 with every single draft that we saw. So I  
21 mean that didn't seem to be getting us  
22 anywhere. As I said, they weren't really  
23 willing to engage at all in a substantive  
24 way on the more pressing, permanent problem

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1       that   they   would   create   impacting   our  
2   parking.

3                       So --

4                       CHAIRPERSON JORDAN:   Let me say  
5   this so Counsel knows, you're now dealing  
6   with one minute and 30 seconds for your  
7   case.

8                       MS. SCHMIDT:    I, I know, and  
9   it's, I'd like to ask for leave for the  
10   other witnesses because the fact is they'll  
11   lose their due process rights here, and  
12   there are two more people, and I think they  
13   should be allowed their three minutes.

14                      CHAIRPERSON JORDAN:    Well, if  
15   they're going to make statements, as I said  
16   before, you've have included people within  
17   your case that could have been outside of  
18   your case.

19                      MS. SCHMIDT:    Yes.

20                      CHAIRPERSON JORDAN:    So we're  
21   going to take those two outside of your  
22   case.

                                  MS. SCHMIDT:    Okay.

23                      CHAIRPERSON JORDAN:    But you're  
24   still within, now, a minute and something.

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1 MS. SCHMIDT: I apologize. I'll  
2 give a quick closing argument and then  
3 you'll hear from the other witnesses.

4 CHAIRPERSON JORDAN: Well, you --  
5 okay. That's fine if you want to do that.

6 MS. SCHMIDT: All right.

7 Testimony of Sue Clain (cont'd)

8 MS. CLAIN: Anyway, I would just  
9 ask the one corporation's one-time profit  
10 not be allowed to totally override permanent  
11 impacts on neighbors.

12 That's it.

13 CHAIRPERSON JORDAN: And I'm  
14 telling you, you'll want to hold your  
15 closing.

16 MS. SCHMIDT: Okay.

17 CHAIRPERSON JORDAN: You'll get  
18 an opportunity to do a closing if you want.

19 MS. SCHMIDT: All right. Very  
20 good.

21 If the other --

22 CHAIRPERSON JORDAN: But right  
23 now, Mr. Brown may want to ask questions of  
24 this witness.

25 MR. BROWN: No, thank you.

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1                   CHAIRPERSON JORDAN:    Well, he's  
2   giving you the benefit there; he's not doing  
3   it.

4                   Is there anything else you want  
5   to bring before us --

6                   MS. SCHMIDT:   I just want --

7                   CHAIRPERSON JORDAN:    -- in your  
8   next 35 seconds?

9                   Questioning by Ms. Schmidt (cont'd)

10                  MS. SCHMIDT:   The, the essence of  
11   your testimony is that this lot is, this  
12   square is already very dense by virtue of  
13   the number of apartment buildings and  
14   Grubb's Pharmacy being there, that we're  
15   more dense than other blocks; is that the --

16                  A.   We're, we're extremely downs, and  
17   we have very great difficulties with  
18   existing legal parking, and the property as  
19   proposed would exacerbate those difficulties  
20   in a permanent way, and impact us both  
21   economically and otherwise, adversely.

22                  MS. SCHMIDT:   Thank you.

23                  CHAIRPERSON JORDAN:    Okay.

24                  Now, Mr. Brown already indicated  
25   he didn't have any questions.

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1                   Now, if there's any other person  
2     who wishes to testify in opposition, you  
3     have three minutes to do so.

4                   Yes? Please come forward to the  
5     microphone.

6                   I think your mic should be on,  
7     and just state your name, please.

8                   Testimony of Andrew Wallace

9                   MR. WALLACE: Andrew Wallace --  
10    I'm a resident at 315 A Street, Northeast,  
11    and have been for 50-plus years.

12                  Mr. Chairman, Board members,  
13    thank you for your time in this matter, and  
14    the other zoning matters in the District. I  
15    appreciate it. Thank you.

16                  I'd like to ask, did you all  
17    receive our letter of opposition that we  
18    mailed to the Board?

19                  CHAIRPERSON JORDAN: I --

20                  MR. WALLACE: For Karen Wallace  
21    and Andrew Wallace?

22                  CHAIRPERSON JORDAN: The Wallace  
23    is -- do we have it on the record?

24                  MR. MOY: Number 42, Mr.  
25    Chairman.

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1 CHAIRPERSON JORDAN: Oh, 42, yes.

2 Then we then we have it, yes. I'm sure  
3 we've looked at it.

4 MR. WALLACE: Thank you.

5 One of the things that we wanted  
6 to point out and my wife asked me to bring  
7 up is -- we mentioned this in the letter --  
8 the ANC letter dated 9/16/13, Exhibit 27, it  
9 says that, it didn't indicate in the minutes  
10 of the ANC meeting specifically that they  
11 noted on their minutes that we sent to you  
12 all in a letter, no windows in the alley in  
13 regards to this project.

14 I just wanted to make sure that -  
15 -

16 CHAIRPERSON JORDAN: Yes, it's  
17 subject to that.

18 MR. WALLACE: Because, it's not  
19 mentioned in the letter at all, yet the  
20 minutes specifically said that that was one  
21 of the stipulations for them approving this.

22 The other thing I'd like to just  
23 -- and this is just my opinion -- in the  
24 late '60s and early '70s, I know that the  
25 one garage, and I can't tell you which plot

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1 or number we're talking about -- the one on  
2 the corner of the alley, the larger of the  
3 two garages; it was rented out. I believe  
4 it was rented out. I don't know if the  
5 gentleman is paying for it, but he was using  
6 it as a workshop to work on his hot rod. So  
7 they have, in the past, rented that out, not  
8 as a garage but as a workshop. So, just  
9 FYI.

10 And the third thing is the shadow  
11 study. I'm directly affected by that, and I  
12 believe that Mr. Brown -- and it was also  
13 stated by Mr. FitzGerald -- that it's  
14 limited or negligible, the actual study of  
15 it, and I'm directly affected by that, to  
16 let you know that this is bull. I lose that  
17 sunlight during the winter, and so does my  
18 neighbor at 317.

19 The last thing I was asked to --  
20 and I wanted to say it also -- is we wanted  
21 to say to Mr. Brown, we appreciated the time  
22 that he spent meeting with us, and  
23 explaining the plans and the possible impact  
24 if this is approved by the zoning for the

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1 construction and demolition if it is  
2 approved.

3 So thank you.

4 CHAIRPERSON JORDAN: Thank you.

5 Board, any questions for Mr.  
6 Wallace?

7 (No response.)

8 CHAIRPERSON JORDAN: Mr. Brown,  
9 do you have any questions?

10 MR. BROWN: No.

11 CHAIRPERSON JORDAN: Ms. Schmidt,  
12 any questions?

13 MS. SCHMIDT: No, thank you.

14 CHAIRPERSON JORDAN: Thank a very  
15 much

16 MR. WALLACE: Thank you.

17 CHAIRPERSON JORDAN: Any other  
18 person wishing to testify in opposition?

19 MR. BREW: Me.

20 CHAIRPERSON JORDAN: I'm sorry?

21 MR. BREW: (Off mic.)

22 CHAIRPERSON JORDAN: Okay, then  
23 you'll three minutes also, please.

24 And begin, please -- and give  
25 your name.

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1                   MR. BREW: Hello. My name is Tom  
2                   Brew. I represent Grubb's Pharmacy.

3                   As all of you probably know,  
4                   we've been in business for over a hundred  
5                   years. We've spent several thousands of  
6                   dollars on renovations, and our time here  
7                   today is not to bear additional cost to  
8                   anybody involved in this process, but to  
9                   express that we do understand it because  
10                  we've gone through it ourselves.

11                  This Commission and the Board and  
12                  the whole organization serves a great  
13                  purpose to do the right thing, and that's  
14                  what we're trying to do today.

15                  Our own situation at this point -  
16                  - I think we were outside the realm of being  
17                  informed by the ANC about the project, but  
18                  we are directly impacted by the project  
19                  simply from a utilities standpoint and  
20                  probably a safety standpoint. And I say  
21                  "probably" because I don't understand the  
22                  legalities of that end of it, but I'll speak  
23                  to the communications.

24                  The communications equipment for  
25                  Verizon, the copper wires, come out of the

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1 ground at the corner where that pole is  
2 going to be possibly moved, renovated,  
3 upgraded, raised, whatever. I've personally  
4 worked with them, and I spent six months  
5 getting wiring correct so that we could be  
6 in business. The communications from that  
7 circuit is critical. If we have any outage,  
8 we have no production. So that's our  
9 concern.

10 The safety issue would be fire  
11 access. Not the restriction of the alley  
12 during construction but this entire parking  
13 situation is an issue. I service five  
14 different pharmacies. As I said, we've  
15 built some more in DC, and in doing those,  
16 we've gone through this process, spent tons  
17 of money -- and I appreciate that; it's  
18 insane, how much you have to go through.  
19 But as I circle the alley to try to find  
20 parking, I have noticed the obstructions. I  
21 can't speak to whose car are whose, but it  
22 is an issue that should be reviewed.

23 Our position in finding out about  
24 this very recently is to simply analyze  
25 these questions, have the proper departments

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1 look at the transportation issue, the -- you  
2 know, whether it's a trashcan issue or not,  
3 I don't know -- but the safety and then the  
4 communications.

5 So that's our basic standing.

6 Any questions?

7 CHAIRPERSON JORDAN: Does the  
8 Board of any questions of this witness?

9 (No response.)

10 CHAIRPERSON JORDAN: Mr. Brown,  
11 do you have any questions of this witness?

12 MR. BROWN: No, thank you.

13 MR. WALLACE: Wallace. Thank  
14 you, everybody.

15 CHAIRPERSON JORDAN: Ms. Schmidt,  
16 any questions of this witness?

17 MS. SCHMIDT: No. Thank you.

18 MR. WALLACE: Thank you. I  
19 appreciate it.

20 CHAIRPERSON JORDAN: Then we will  
21 turn back to the Applicant for any --

22 MS. SCHMIDT: I think there was  
23 one witness here that was going to testify,  
24 I mean, solely --

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1 CHAIRPERSON JORDAN: Is there any  
2 other person here who is going to speak in  
3 opposition?

4 (Speaker talks off mic.)

5 CHAIRPERSON JORDAN: Yes, any  
6 testimony that we've gotten, we've read  
7 those things. Thank you.

8 MS. SCHMIDT: I guess I would  
9 like to testify just briefly.

10 CHAIRPERSON JORDAN: Well, you've  
11 used your time.

12 MS. SCHMIDT: Okay. RA, thank  
13 you.

14 CHAIRPERSON JORDAN: You're done.  
15 Mr. Brown, any redirect?

16 MR. BROWN: Just very briefly.

17 Questioning by Mr. Brown

18 MR. BROWN: Mr. FitzGerald,  
19 clarify where you think the gas and electric  
20 utility meters could be installed on the  
21 proposed property.

22 MR. FITZGERALD: There are two  
23 options. I've -- excuse me -- went over  
24 that recently with my architect.

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1                   One would be, if we are forced to  
2                   do this, it would be on the exterior of the  
3                   property. It would be near the southeast  
4                   corner right outside of the utility room.

5                   The architect also said that  
6                   there is --

7                   CHAIRPERSON       JORDAN:           The  
8                   exterior, inside the property line?

9                   MR. FITZGERALD: No. It would be  
10                  on the exterior of the building, sir.

11                  But also, my architect expressed  
12                  that it is a distinct possibility, with  
13                  remote metering, that the meters could be  
14                  located inside the property in the --  
15                  there's an area where we're proposing  
16                  putting trashcans and having some storage.  
17                  The barriers would be inside because they  
18                  can't be remotely read electronically now,  
19                  and they're, they're starting to grant that  
20                  with new construction.

21                  So I can't say definitively that  
22                  they would be on the inside, but I've been  
23                  told by my architect that, that there's a  
24                  good likelihood of that. .

25                  Questioning by Mr. Brown (cont'd)

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1                   MR.     BROWN:           And     again,  
2     clarifying, repeating your testimony from  
3     earlier, the ability or the plan to have  
4     space in the garage parking area for trash  
5     cans --

6                   MR.     FITZGERALD:       Yes, there,  
7     there's a closet that was specifically  
8     designed for that.

9                   MR.     BROWN:     Would that a permit  
10    them to be brought off the public space  
11    inside.

12                  MR.     FITZGERALD:   Correct.

13                  CHAIRPERSON JORDAN:   How would  
14    that get picked up?

15                  MR.     FITZGERALD:   They're put out  
16    into the alley, just like many other people  
17    do.    It would be similar to what other  
18    residents do.    I believe you've seen  
19    pictures of that.

20                  Questioning by Mr. Brown (cont'd)

21                  MR.     BROWN:     On collection day,  
22    you would bring them up into the public  
23    place, the alley, and you're allowed to  
24    leave them there until the collected, and  
25    then you bring them in.

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1                   Mr. FitzGerald, if you could,  
2           clarify and, and repeat your testimony about  
3           the uses of the garage space, currently.

4                   MR. FITZGERALD:     Currently, we  
5           store more and more for -- the best way to  
6           describe it -- debris. When we go in, we do  
7           renovations of apartments. We can take  
8           construction materials and store them in  
9           there until such time that it becomes  
10          beneficial to send a large truck down to  
11          take those away.

12                  The before-referenced things,  
13          such as air-conditioning units,  
14          refrigerators, different appliances, those  
15          are all junk. I don't put anything of any  
16          value on those properties because, like I  
17          stated before, they're broken into, they're  
18          vandalized, they're not watertight, and the  
19          use of them is, is for -- the best way I can  
20          describe it in one word -- trash.

21                  MR. BROWN:     And if we could --  
22          your process, approval process, for this  
23          project had two elements. The first was  
24          historic preservation.

25                  MR. FITZGERALD:   That's correct.

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1                   MR. BROWN:     And when did that  
2     occur?

3                   MR. FITZGERALD:    I'm trying to  
4     think.   That was --

5                   MR. BROWN:    Back in 2012.

6                   MR. FITZGERALD:     November of  
7     2012; correct.

8                   MR. BROWN:    And at that point,  
9     the matter was reviewed and voted on by ANC  
10    6C.

11                  MR. FITZGERALD:   That's correct.

12                  They        reviewed        it        both  
13     conceptually, they reviewed it when it was  
14     formally brought up.   Then it went through  
15     their zoning -- excuse me -- planning,  
16     zoning, and environmental board.   So, three  
17     times, I visited the ANC.

18                  MR. BROWN:    And when was the most  
19     recent time that the ANC reviewed the  
20     matter?

21                  MR. FITZGERALD:   It was the PZE.  
22     I, I'm not aware of the exact date of it.

23                  MR. BROWN:    September of 2013.

24                  MR. FITZGERALD:   That's correct.

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1                   MR. BROWN:     And at that time,  
2     they voted to support the project.

3                   MR. FITZGERALD:     They did,  
4     unanimously.

5                   MR. BROWN:     And at that time, was  
6     there a restriction on windows facing the  
7     alley?

8                   MR. FITZGERALD:     There, there  
9     were restrictions that was pleased in what  
10    were windows that overlooked Mr. Eisenberg's  
11    property, which I agreed to, that that would  
12    be an invasion of privacy. But there were  
13    no restrictions as to the alley or the  
14    windows that would look out into the parking  
15    spot to the rear of 319 A Street.

16                  MR. BROWN:     And the, the plan as  
17    presented, in fact, respects the ANC request  
18    as it relates to Mr. Eisenberg.

19                  MR. FITZGERALD:     It has not  
20    changed. It's the exact same.

21                  MR. BROWN:     Okay.

22                  CHAIRPERSON JORDAN:     Any --

23                  MS. SCHMIDT:     Yes, I have  
24    questions on redirect if I may.

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1 CHAIRPERSON JORDAN: On recross,  
2 yes. Go ahead.

3 MS. SCHMIDT: Yes, recross.

4 Questioning by Ms. Schmidt

5 MS. SCHMIDT: Mr. FitzGerald, you  
6 are at a meeting with neighbors. Do you  
7 recall when you brought a building expert  
8 with you?

9 MR. FITZGERALD: His name is  
10 Jason Evans. He's with Acadia. He does  
11 both construction and remodeling, yes.

12 MS. SCHMIDT: Do you remember  
13 Jason saying that the gas meter had to be  
14 located outside of the property when  
15 neighbors objected, and you stated it needed  
16 to be outside because it would be, it was  
17 required by code; the gas company could  
18 access that meter and apparatus in the case  
19 of an emergency?

20 MR. FITZGERALD: I think he  
21 stated that traditionally, it's done that  
22 way.

23 As I stated earlier, twice, and  
24 I'll do it a third time, my architect has  
25 said that the chances are that we could

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1       locate those internally so that that  
2       wouldn't be an issue.

3               MS. SCHMIDT: Those are chances,  
4       though. He said "chances are," and you said  
5       you've wouldn't promise; is that correct?

6               MR. FITZGERALD: I believe it can  
7       be done, but I can't verify that.

8               MS. SCHMIDT: And, and you don't  
9       have any firsthand knowledge about whether  
10      or not the code requires the meter to be  
11      outside so it can be accessed in case of  
12      emergency.

13              MR. FITZGERALD: What was sent to  
14      me two days ago by my architect were  
15      actually specifications by Washington Gas  
16      and by PEPCO talking about the  
17      electronically-read meters being located in  
18      new construction.

19              So I, I believe that the --

20              MS. SCHMIDT: But they're not  
21      here to --

22              MR. FITZGERALD: -- if I can  
23      finish please -- I believe the companies  
24      know what they're doing and what the  
25      regulations are.       MS. SCHMIDT: You would

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1 agree that's hearsay, three times removed,  
2 what your architect --

3 CHAIRPERSON JORDAN: I said we  
4 weren't going to have that type of argument,  
5 Counsel.

6 If you want to ask the question,  
7 please do so.

8 Questioning by Ms. Schmidt (cont'd)

9 MS. SCHMIDT: Let's talk about  
10 the ANC meeting. At the time of the ANC  
11 meeting, the agency was not apprised of the  
12 possibility that you would be having a gas  
13 meter out in the alley where it might  
14 obstruct Doctor and Mrs. some wine and Mr.  
15 and Mrs. Hollis and others from using it.  
16 Is that correct?, That was not disclosed  
17 and Caldwell on the plan?

18 MR. FITZGERALD: It wasn't  
19 discussed, period, and I still don't think  
20 that's an issue.

21 MS. SCHMIDT: Isn't it, isn't it  
22 true, in the last two days that you sent  
23 around the new drawing which shows the gas  
24 meter and electric meter on the outside of  
25 the property?

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1                   MR. FITZGERALD:    That was what  
2   was requested in a worst-case scenario by  
3   the neighbors, and yes, I did share that.

4                   MS. SCHMIDT:    So there, you would  
5   agree that the plan that was looked at by  
6   the ANC was a different plan than you sent  
7   the neighbors two days ago.

8                   MR. FITZGERALD:   It's --

9                   MS. SCHMIDT:    Yes or no.

10                  MR.     FITZGERALD:           It's     an  
11   amendment.

12                  I'm not going to answer yes or  
13   no.

14                  MS.     SCHMIDT:           But you'd agree  
15   that it, the plan now shows a gas meter and  
16   electric meter in the alley.

17                  MR.     FITZGERALD:           It's     a  
18   possibility.

19                  MS.     SCHMIDT:           And you've  
20   discussed at hearings -- excuse me --  
21   meetings with neighbors that there would  
22   either need to be a protective bollard or a  
23   cage around that proposed gas meter; is that  
24   correct?

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1                   MR. FITZGERALD:     If we're not  
2     able, if we're not able to locate them  
3     inside, my architect said that a protective  
4     caging might be required

5                   MS. SCHMIDT:     Or bollards; is  
6     that correct?

7                   MR. FITZGERALD:     Not bollards;  
8     caging.

9                   MS. SCHMIDT:     Didn't Jason --  
10    isn't it true that there was a meeting where  
11    Jason stated -- your architect -- excuse me  
12    -- your building expert -- that bollards  
13    would be required for safety purposes to  
14    protect the meter?

15                  MR. FITZGERALD:     That was a  
16    possibility.

17                  MS. SCHMIDT:     Well -- I'm going  
18    to tell the Board at this time, the minutes  
19    of the meeting are provided --

20                  CHAIRPERSON JORDAN: I'm going to  
21    say this -- let me stop this whole line of  
22    conversation -- I'm very clear on the record  
23    about what was said, what's in there, and  
24    what's in the plans. This has gone back and  
25    forth, and we know what's on the plans.

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1                   And we have also had testimony  
2           that, where the meters may be, but we've  
3           also subsequently had the conversation that  
4           there has been discussion that they might be  
5           able to relocate those things inside.  
6           They're not guaranteeing it, but they've had  
7           the discussion because it might be allowed  
8           to be electronically monitored.

9                   So we're good on that.

10                   MS. SCHMIDT:   Okay.

11                   CHAIRPERSON JORDAN:   Okay.

12                   Questioning by Ms. Schmidt (cont'd)

13                   MS. SCHMIDT:   Mr. FitzGerald, you  
14           would agree that it in September or October  
15           of this year when you provided your  
16           application to the BZA that you said that  
17           the garages were taken; is that correct?

18                   MR.     FITZGERALD:           Partially  
19           vacant.

20                   MS. SCHMIDT:   Did you say they  
21           were vacant?

22                   MR. FITZGERALD:   No.

23                   MS. SCHMIDT:   No.

24                   MR. FITZGERALD:   No.

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1 MS. SCHMIDT: I'll direct, could  
2 I have you look at page 2 of your  
3 application of October --

4 CHAIRPERSON JORDAN: I don't know  
5 we have that covered in our redirect.

6 I'm going to let this go, but we  
7 need hold these questions to what's been  
8 asked on redirect.

9 MR. BROWN: And what, what are  
10 you referring to?

11 MS. SCHMIDT: The vacant garages.  
12 He has just stated that he has not --

13 MR. BROWN: So you're referring  
14 to a document.

15 MS. SCHMIDT: Yes, I'm referring  
16 to a document. And you, on redirect, asked  
17 him about the use of the garages and being  
18 vacant.

19 I feel it's appropriate, since he  
20 has just stated --

21 CHAIRPERSON JORDAN: Counsel,  
22 I've already ruled what we're going to be  
23 doing, so I'm going to ask you to adhere to  
24 that. And let's not you and I start arguing  
25 because you're not going to win.

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1 MS. SCHMIDT: All right. Okay.

2 CHAIRPERSON JORDAN: So let's go  
3 forward and ask the question.

4 MS. SCHMIDT: That was my  
5 question he has, just that he has stated  
6 that they are vacant in the application, and  
7 I wanted to direct him to the application.  
8 You've ruled that I cannot ask that  
9 question, as I understand it, so I withdraw  
10 it.

11 MR. BROWN: No, you can --

12 CHAIRPERSON JORDAN: I said he  
13 can answer this last one, on that point that  
14 you asked, 'Did you previously say in this  
15 document that these units are vacant, these  
16 garages are vacant?'

17 MR. BROWN: Which, which document  
18 is she referring to?

19 MS. SCHMIDT: I'm referring to  
20 the October 22, 2013 filing on page 2 under  
21 III. "Description of the Property and  
22 Surrounding Areas" is the heading, and then  
23 it says in sentence 2, "1890 with a  
24 dilapidated vacant one-story block garage."

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1                   And then the next one: "Vacant  
2                   and dilapidated," on the fourth line.

3                   MR. FITZGERALD: I, I, I guess  
4                   we, we'd be getting into the issue about  
5                   what you define as vacant. I mean, if you  
6                   open them up, there's not a whole hell of a  
7                   lot that's in there; excuse my language.  
8                   And we store things there temporarily, and  
9                   then they're carted off site.

10                  So these aren't used intensively.  
11                  As I said, it, it's, it's like trash depot  
12                  is best way to describe it. It depends how  
13                  you want to define "vacant."

14                  MS. SCHMIDT: Nobody else -- you  
15                  haven't allowed neighbors in to see the  
16                  property, have you?

17                  MR. FITZGERALD: Ma'am, I'm not  
18                  there with my, my service technicians each  
19                  and every day, and I don't know what they've  
20                  done.

21                  MS. SCHMIDT: So your service  
22                  technicians are there each and every day.  
23                  That's what you've just stated.

24                  MR. FITZGERALD: I said I'm not  
25                  with my service technicians every day.

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1 MS. SCHMIDT: You said they are.

2 I have no other questions.

3 CHAIRPERSON JORDAN: All right.

4 You know what? That point is  
5 over, so now we're getting ready to move.  
6 We've had cross and recross; there is no  
7 more recross because we just cut that off.  
8 And I think you work at your conclusion of  
9 that, anyway. So we will close this hearing  
10 based upon the record.

11 If there is, if you want to take  
12 a minute to close, Mr. Brown, take a minute  
13 to close if you feel it's necessary.

14 MR. BROWN: No, I think our time  
15 would be better spent -- the Board has asked  
16 for some very specific --

17 CHAIRPERSON JORDAN: Yes, we're  
18 going to go through that.

19 MR. BROWN: Okay. I think we'll  
20 proceed to that and allow the record to be  
21 supplemented that way.

22 CHAIRPERSON JORDAN: Ms. Schmidt,  
23 you have a minute if you want to --

24 MS. SCHMIDT: Just briefly, to  
25 say that they haven't met their burden of

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1 showing that they have a hardship with  
2 regard to their property. The evidence has  
3 shown that they're producing income from the  
4 rental units at 319 A, they are the frontage  
5 property, that this one garages located  
6 behind, and they haven't met their burden  
7 with that regard.

8 And we look forward to briefing  
9 on the issue of appropriateness of the party  
10 applying for this variance, as well as  
11 responding to their briefing on the  
12 financial aspects and the hardship that,  
13 that they assert that they suffer with  
14 regard to 319 A and the former old stable.

15 CHAIRPERSON JORDAN: All right,  
16 so that will conclude our hearing.

17 We're going to move this for a  
18 decision for March 11. We'll make our  
19 decision on March 11.

20 By February 25, we need from the  
21 Applicant the rate of return on all the  
22 potential uses of the property, which would  
23 include both the proposed use and any  
24 alternatives that we've talked about that  
25 are allowable within zoning regulations.

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1                   We need a potential growth value  
2                   and the increased value rate.   We need to  
3                   see that.

4                   We also need to have the costs  
5                   and return rate associated with the new  
6                   development.   We haven't gotten anything  
7                   that shows the cost of the new development,  
8                   the construction costs, this, that, and the  
9                   other.   We need each one of those.

10                  Board, is there anything else  
11                  that we're going to need?

12                  (No response.)

13                  CHAIRPERSON JORDAN:   I would also  
14                  ask that the Applicant to find out from the  
15                  Department of Transportation for me whether  
16                  or not parking in that alley, in that court  
17                  area, is legal or illegal.

18                  Is there anything else?

19                  MR. BROWN:   Just in, in terms of  
20                  the information we're requesting on the  
21                  alternative uses, I would ask that that  
22                  information also be provided for the  
23                  alternative that the witness, Susan, has  
24                  claimed, suggested, as a compromise of the  
25                  two-bedroom, two garage --

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1 CHAIRPERSON JORDAN: So, instead  
2 of three units, two units and two garage  
3 spaces, yes.

4 Ms. Allen, do you have anything  
5 additional?

6 VICE CHAIRPERSON ALLEN: No.

7 CHAIRPERSON JORDAN: Okay.

8 MR. BROWN: Mr. Chairman, just to  
9 clarify the question that's being asked on  
10 that, you'd like for an analysis of a two-  
11 story structure was two ground-level --

12 CHAIRPERSON JORDAN: I think  
13 there is parking, at least two parking  
14 spaces on the ground level and then the two  
15 living quarters upstairs.

16 MR. BROWN: Okay.

17 CHAIRPERSON JORDAN: Yes. That's  
18 what we're requesting. We want to get the  
19 analysis on those things -- what's going to  
20 be your cost of it, the effect upon the  
21 development, and whether or not it's  
22 financially feasible to do so, because it  
23 becomes a viable alternative to the relief,  
24 and that's what Mr. Miller is talking about.

25 Correct?

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1 MEMBER MILLER: Yes.

2 CHAIRPERSON JORDAN: All right,  
3 so the date for this information from the  
4 Applicant is February 25, please. And be  
5 sure that we give that to the opposing  
6 party.

7 MS. SCHMIDT: How long do I have  
8 to respond to that?

9 CHAIRPERSON JORDAN: Ms. Schmidt  
10 --

11 MS. SCHMIDT: Oh, I'm sorry.

12 CHAIRPERSON JORDAN: You know,  
13 I'm really patient guy.

14 MS. SCHMIDT: I'm sorry; I do  
15 probate work, usually. I'm sorry.

16 CHAIRPERSON JORDAN: But today --  
17 I know you haven't been here, and we really  
18 appreciate you doing the best you can, but  
19 Jesus.

20 Your opposition memorandum and  
21 response will be due March 4. See? We had  
22 already lined up for you: March 4. Okay?

23 So the dates again are February  
24 25 from the Applicant, March 4 from the  
25 Opposition, and decision on March 11.

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1                   Is that okay, Board?    Is that  
2                   good for you?

3                   MR. BROWN:   Mr. Chairman, and for  
4                   purpose of service on --

5                   CHAIRPERSON JORDAN:   Ms. Schmidt.

6                   MR. BROWN:    Is it good enough  
7                   just to do it on her?

8                   CHAIRPERSON JORDAN:   Yes.

9                   MR. BROWN:    Okay.

10                  CHAIRPERSON JORDAN:   Okay.

11                  We can't take any more testimony  
12                  or questions or issues, at this point.

13                  MR. FITZGERALD:   (Off mic.)

14                  CHAIRPERSON    JORDAN:           Is it  
15                  germane?

16                  MR.    FITZGERALD:           Your Honor,  
17                  just, I don't know the procedures, how it  
18                  goes, these dates that you're talking about.  
19                  But (off mic).

20                  CHAIRPERSON JORDAN:   No, no, no.  
21                  March 11 is the only time we're going to be  
22                  back in this room to deliberate, and the  
23                  Board will deliberate and decide the case.  
24                  There's no testimony being given at that  
25                  point.

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1                   MR. FITZGERALD:    But the public  
2   will be welcome to that.

3                   CHAIRPERSON       JORDAN:            Oh,  
4   absolutely.  The public is welcome to all of  
5   our meetings and hearings -- 9:30.

6                   MR.    FITZGERALD:           Nine-thirty.  
7   Thank you.

8                   I'm sorry.

9                   CHAIRPERSON   JORDAN:       No,   no.  
10   That's a good question.

11                   All right, so then we will end  
12   this hearing subject to the documents being  
13   submitted.

14                   Thank you all.

15                   MR. BROWN:  Mr. Chairman?

16                   CHAIRPERSON JORDAN:  Yes?

17                   SPEAKER:  Are we considering the,  
18   Ms. Schmidt's motion on the --

19                   CHAIRPERSON JORDAN:  Okay, thank  
20   you.  Thank you.  That's the other part; I  
21   left it out.

22                   I need both parties to brief, by  
23   February 25 -- and you will both exchange  
24   the document -- regarding the ownership  
25   issue.

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1 MS. SCHMIDT: Okay.

2 CHAIRPERSON JORDAN: Okay, so you  
3 need to submit you need to submit and file,  
4 Ms. Schmidt, by February 25, your version of  
5 the ownership issue --

6 MS. SCHMIDT: Okay.

7 CHAIRPERSON JORDAN: -- and your  
8 representation.

9 And then Counsel will have until  
10 March 4 to respond. Okay?

11 MS. SCHMIDT: Thank you very  
12 much.

13 CHAIRPERSON JORDAN: She's going  
14 to submit you her information and give you  
15 time to go over it, and then we can shoot it  
16 back.

17 MR. BROWN: I have to submit by  
18 the 25th.

19 CHAIRPERSON JORDAN: No, you --

20 MR. BROWN: That's fine.

21 CHAIRPERSON JORDAN: We want to  
22 make sure everybody has time to get it in.  
23 Let's have something because the Board is  
24 going to decide this one way or the other.

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1                   And like I said, I appreciate  
2           everybody coming out. You know, this stuff  
3           is not easy, and one of the things that we  
4           always like to is a compromise if people can  
5           work things out because neighbors are  
6           neighbors, and we hope that neighbors will,  
7           you know, always live and work together.  
8           But we know that sometimes, we have to make  
9           those decisions, and everybody's not happy,  
10          but that is what we do. We volunteer our  
11          time to get this done for you.

12                   But we've really appreciate  
13          everybody taking the time and being  
14          interested in your neighborhood one way or  
15          the other because it's important to at least  
16          hear from people. Sometimes, people don't  
17          say anything, and then after the fact, they  
18          gripe.

19                   Thank you all. We appreciate it.  
20          And thanks for even trying to reach out  
21          because you know how important it is to this  
22          Board that we try to work out some  
23          compromises.

24                   I think we will conclude this  
25          hearing.

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1 CHAIRPERSON JORDAN: Any other  
2 business before the Board?

3 MR. MOY: Mr. Chairman, two  
4 things. First is --

5 CHAIRPERSON JORDAN: Oh, I've got  
6 to read some stuff.

7 MR. MOY: No, not yet; that was  
8 one of them.

9 Was it clear in the record that  
10 the opposition party, with the drawings and  
11 diagrams that were on the boards, the page  
12 cites submitted for the record, the drawings  
13 or photographs or diagrams that you've shown  
14 on your board?

15 Do you have page cites of copies  
16 that are already in the record?

17 MS. SCHMIDT: No. I was told  
18 that I could do that after the hearing,  
19 provide them in page cites.

20 MR. MOY: That's good. That's  
21 fine.

22 CHAIRPERSON JORDAN: Okay,  
23 FitzGerald hearing is closed.

24 (Whereupon, the hearing concluded  
25 at 2:27 p.m.)

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