

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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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 4th
Street, N.W., Washington, D.C., 20001,
pursuant to notice at 9:30 a.m., Lloyd
Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

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

(9:47 a.m.)

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

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

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

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

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

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 to 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 wide 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 they are 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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