

0GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

FEBRUARY 4, 2014

+ + + + +

The Regular Public Hearing  
convened in the Jerrily R. Kress Memorial  
Hearing Room, Room 220 South, 441 4<sup>th</sup> Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 9:30 a.m., Lloyd Jordan,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
S. KATHRYN ALLEN, Vice-Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT  
PAUL GOLDSTEIN  
STEPHEN GYOR  
STEPHEN MORDFIN  
ELISA VITALE

The transcript constitutes the  
minutes from the Public Hearing held on  
February 4, 2014.

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

10:19 a.m.

MR. MOY: The first application in the hearing session is application No. 18697. This is the application of Mattie McLain. This is for a special exception for a massage establishment under section 731, in the C-2-A at 3429 14th Street, N.W.

BZA CHAIR JORDAN: Okay. Would the parties or persons in 18697 please come to the witness table, please?

Would you please make sure your microphones are turned on? You'll see a bright glowing green light. And if you'd provide the witness cards to the court reporter. Okay. Just make sure you come closer so we can hear you. You have to speak into the microphone. Would you identify yourselves? No, you got to make sure your microphone is on and closer, please. Now, let's try it.

MS. McLAIN: I'm Mattie McLain.

BZA CHAIR JORDAN: Okay.

MR. ROLLINS: And I'm Purvis Rollins.

BZA CHAIR JORDAN: And regarding this application you are?

MR. ROLLINS: I'm the business owner and her grandson.

BZA CHAIR JORDAN: Okay. This is a matter -- I don't see where there's any issues. It's pretty straightforward. You have ANC support and DDoT support and OP support. And I don't have any issues with the application. I think you meet the burden and requirements for receiving the variance which you requested.

Does the Board have any questions that they think that -- or any reason why we think we need additional testimony or additional evidence from the applicant in this matter?

ZC CHAIR HOOD: No, Mr. Chairman. I would agree. I think the record is complete. I think it has a lot of support, especially being conducive for the surrounding area.

BZA CHAIR JORDAN: The way we operate, we normally have the applicant provide testimony and evidence in support of what they've already filed, however, the Board at this point feels as though that there's enough already in the record and we don't have to hear anything else from you unless you just want to talk. But sometimes people have done that and gotten themselves in trouble. They went from getting something approved to not getting it approved. So then I take by -- you agree that we can go on with the proceeding and you'll just waive any additional testimony at this time?

MR. ROLLINS: Yes, sir.

BZA CHAIR JORDAN: Good. So then let's turn to the Office of Planning and see if there's anything in addition that Office of Planning would like to add to their report.

MS. ELLIOTT: Thank you, Mr. Chairman. For the record, my name is Brandice Elliott with the Office of Planning. And we'll go ahead and stand on the record. We are recommending approval of this special exception request.

BZA CHAIR JORDAN: Good. Board, any questions of Planning?

(No audible response.)

BZA CHAIR JORDAN: Applicant, any questions of Planning?

(No audible response.)

BZA CHAIR JORDAN: Then let's turn to Department of Transportation. Anyone for Department of Transportation here for this particular case?

(No audible response.)

BZA CHAIR JORDAN: I do not see them. So we do have a letter from Department of Transportation which has no objection to the relief being sought.

Is there anyone here from ANC-1A?

(No audible response.)

BZA CHAIR JORDAN: ANC-1A?

(No audible response.)

BZA CHAIR JORDAN: We have a letter from ANC-1A to which the Board will give great weight to that supports approval by a vote of 9-0.

Is anyone here wishing to speak in support of this application?

(No audible response.)

BZA CHAIR JORDAN: Anyone wishing to speak in support?

(No audible response.)

BZA CHAIR JORDAN: Anyone wishing to speak in opposition?

(No audible response.)

BZA CHAIR JORDAN: Anyone wishing to speak in opposition?

(No audible response.)

BZA CHAIR JORDAN: Then we will turn back to the applicant where we normally would have you do rebuttal and/or closing, but there's nothing to rebut and there's nothing to close other than what you've already submitted.

Based upon the record in this matter, I would move that the Board grant the relief requested in 18697.

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ZC CHAIR HOOD: Second.

BZA CHAIR JORDAN: Motion made and seconded. Any discussion?

(No audible response.)

BZA CHAIR JORDAN: All those in favor of the motion, signify by saying aye?

(Chorus of ayes.)

BZA CHAIR JORDAN: Those opposed, nay?

(No audible response.)

BZA CHAIR JORDAN: The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as 4-0. This is on the Chairman Jordan to approve the request for special exception relief under 731. Seconding the motion, Mr. Anthony Hood. Also in support of the motion, Vice-Chairperson Allen and Mr. Hinkle. Board seat vacant. Motion carries on a vote of 4-0.

BZA CHAIR JORDAN: And summary order, please?

MR. MOY: Yes. Thank you, sir.

BZA CHAIR JORDAN: Thank you.

MR. ROLLINS: Thank you.

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BZA CHAIR JORDAN: Sorry to make it so rough for you.

MR. MOY: The next application before the Board is application No. 18698. This is the application of M Street Yoga Studio, and as advertised it's for a variance from the use provisions to establish a yoga studio under section 350.4, in the R-5-D, at premises 300 M Street, S.W.

BZA CHAIR JORDAN: Okay. That's this one. Okay. Looking at my notes. You know, the Board puts in 8 to 12 hours before these hearings going through these things, so we have to sometimes catch up with our notes, and that's what I was just doing.

Would you identify yourself, please?

MS. FIERST: Hello, Pamela Fierst. I'm the applicant.

BZA CHAIR JORDAN: McPherson?

MS. FIERST: Fierst. F-I-E-R-S-

T.

BZA CHAIR JORDAN: Couple of issues with this one. One, the Zoning Regulations does not provide for a use called a yoga studio.

MS. FIERST: Yes.

BZA CHAIR JORDAN: And your application is speaking in regards for relief for zoning a yoga studio. The classification that's closest to that is a group instruction center or studio use. So I'm going to ask you do you want to amend your application so it reflects the proper use?

MS. FIERST: Yes.

BZA CHAIR JORDAN: And so we're going to need you after this hearing to certainly supplement the file with that request, that you're amending it for that.

MS. FIERST: I'm sorry, amend it to reflect group instruction?

BZA CHAIR JORDAN: Group instruction center or studio use, either. I don't know why the Zoning Commission doesn't add yoga studio in there, but --

ZC CHAIR HOOD: I actually remember that was a long conversation. I do remember that now.

BZA CHAIR JORDAN: Okay. Since we've got the Chairman here, we might as well go right to the source.

PARTICIPANT: (Off microphone.)

BZA CHAIR JORDAN: Yes, right.

There's many yoga studios that are around, but --

ZC CHAIR HOOD: But it's very easy to do.

BZA CHAIR JORDAN: That's why you guys get paid the big bucks.

ZC CHAIR HOOD: Yes, right.

BZA CHAIR JORDAN: It's all volunteer, so that's -- let me tell you the problem I'm having with this, because I know this building. I know this building well. And the issue is trying to determine how this building is actually unique from the other office space that's there on the other side, like the cleaners and the other things, the other office that's on the other side of the space. I know this spot well.

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MS. FIERST: Yes.

BZA CHAIR JORDAN: And the Zoning Regulation require that there's a showing of some type of uniqueness or exceptional condition that creates a practical difficulty for you to use the property in the way that it's required under the Zoning Regulations.

I really don't have a problem with the use, but I'm just trying to ask you for some help so that we can justify what I think we may want to do with this one.

MS. FIERST: Yes.

BZA CHAIR JORDAN: So tell us why this property is unique from the other properties next door, the other office and the other things that's part of the Carrollsburg --

MS. FIERST: Yes. Okay. Well, just to clarify, the condo documents allow this space to be used in comportment with any usage applicable under D.C. law. Right? So the condo documents contemplate a usage of this unit other than residential. Initially when the building was constructed, this unit was actually used for storage and there was a Certificate of Occupancy motion made in the early '90s to transfer it into residential. So it's initial usage was different than that of the rest of the Carrollsburg community.

As noted in the application, there's another commercial unit on the ground floor of this building, used as a dry cleaner that's services the community. And there is yet another usage under -- for commercial purpose in a different tower in this community. And so in that light it is one of several units used for a commercial purpose.

This particular unit physically, as is noted in some detail in our application as well as in the Office of Planning support for the application, is the unique character of the surrounding windows, the surrounding doors and the immediate outside access to common area that surrounds this. You can kind of tell from the photos that were submitted with the application there are roughly, if my count is correct, seven exterior exits in this unit and every side of it is covered in some sort of floor-to-ceiling window. Use as a residence is, frankly, quite bizarre.

BZA CHAIR JORDAN: You said there are seven exterior exits?

MS. FIERST: Yes. One, two, three, four, five, six, seven.

BZA CHAIR JORDAN: Okay.

MS. FIERST: I think there had been eight, but a previous use had actually dry walled over. So if you were to look at it from the outside, you would actually see nine doors. But here there are eight, because from the inside they dry walled one off.

So those characteristics in and of themselves don't lend themselves to immediate residential purpose. Right? Imagine sitting there in a room covered in floor-to-ceiling windows with, you know, a public sidewalk right outside your door with no, you know, kind of barrier to it. It's quite strange.

BZA CHAIR JORDAN: Okay. Let me ask, Board, any other questions?

(No audible response.)

BZA CHAIR JORDAN: I think I got the hang the hat on. We've been struggling with this one. I think you just kind of pinpointed one of the issues for us.

Any other questions, Board?

(No audible response.)

BZA CHAIR JORDAN: Then there's probably nothing else we need to hear from you on this one.

MS. FIERST: Okay.

BZA CHAIR JORDAN: Unless you just want to talk, but we can go to Office of Planning and see what they want to add in.

MS. VITALE: Good morning, Mr. Chair, Members of the Board. Elisa Vitale with the Office of Planning. The Office of Planning will rest on the record and supports the requested us variance relief.

BZA CHAIR JORDAN: Good. All right. Thank you.

Board, any questions of Office of Planning?

(No audible response.)

BZA CHAIR JORDAN: Applicant, any questions of Office of Planning?

MEMBER HINKLE: Mr. Chair?

BZA CHAIR JORDAN: Yes, Mr. Hinkle?

MEMBER HINKLE: Yes, please. If you could just expand on your thoughts in terms of what are the unique properties for this?

MS. VITALE: Certainly.

MEMBER HINKLE: That would be helpful.

MS. VITALE: As the applicant stated, these are residential condominium buildings in the R-5-D Zone. There are ground floor spaces in each of these towers that aren't conducive to residential use and have been repurposed. There is the dry cleaners in the subject property, a condominium office and then a community meeting room in the other buildings. As the applicant stated, the way that this property is laid out and is functioning with the numerous exterior exits, proximity to the public sidewalk, it's not conducive to a residential use given its location and the way that the unit is configured. There's also some modifications on the interior, floor-to-ceiling mirrors, other changes that have been made to the interior space that again don't lend to being used as a residential use.

MEMBER HINKLE: Okay. Thank you. That's helpful.

BZA CHAIR JORDAN: The applicant, any questions of Office of Planning?

MS. FIERST: No.

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BZA CHAIR JORDAN: Anyone for  
Department of Transportation?

(No audible response.)

BZA CHAIR JORDAN: We have a letter from Department of Transportation which has no objection to the relief requested.

Is anyone here from ANC-6D?

(No audible response.)

BZA CHAIR JORDAN: ANC-6D has sent a recommendation of approval which the Board would give great weight to. The vote was 6-0 in support.

Is anyone here wishing to speak in support of this application?

(No audible response.)

BZA CHAIR JORDAN: Anyone wishing to speak in support of this application?

(No audible response.)

BZA CHAIR JORDAN: Anyone wishing to speak in opposition?

(No audible response.)

BZA CHAIR JORDAN: Anyone in opposition?

(No audible response.)

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BZA CHAIR JORDAN: Then we would turn back to the applicant, but there's nothing to rebut. And so we would then close the record based upon what we have.

As I said, this was one that was -- I think this is one of those things that we talked about. And I've previously said that there needs to be some other provision, Mr. Chairman Hood, that in the Zoning Regulations. I believe there should be something that gives the Board a little bit more leeway because potentially like this one could be property that may not have a real uniqueness to it or exceptional condition, however, it really can't be used for the zoning purpose. And, you know, there's a whole bunch of -- we've talked before about some examples of that. But the property might look like the next door neighbor's and they all have the same issue and no one can use the property based upon the way it's zoned.

But this is one where I think I can weigh my hat on with the seven exterior doors. Not so much on the floor-to-ceiling windows, but the seven exterior doors, because I don't think there's another piece of property there that has seven exterior doors. And that certainly does it conducive -- because it's a very small space. I mean it's a couple of shoulder-lengths wide. And having that many doors is just really kind of ridiculous. And it also doesn't have a door -- if it was to be residential, a door that leads into the residential common area where everybody else has the opportunity to venture.

So with that, I could support this application. Haven't made a motion yet, but I just want to hear what the Board has to say.

MEMBER HINKLE: Yes, I tend to agree with you, Mr. Chair. The use seems appropriate for this site. And, you know, but it is difficult for the Board to look at this and really hang our hats on what's unique about this property in general. But I think the location of the space within the -- and how it's configured in the building lends itself to being somewhat unique, as well as, as they said, the seven exterior doors to the site. And with that, I think I could support the application and the request.

BZA CHAIR JORDAN: Anyone else?  
Mr. Hood?

ZC CHAIR HOOD: I think the Office of Planning and its exceptional situations scenario narrative makes the argument for us. I think that doing a retrofit would be a hardship. And I also agree -- but I think that the Zoning Commission has the time and actually participated in the yoga discussion as far as the use. And I think that part of it, I'm not sure if I would then, but I think this discussion here is unique within itself. Also with the retrofit and also with the narrative that the Office of Planning has in its discussion I think gets us over that threshold to move forward. And I would move that we approve a variance from the use provisions to establish an instruction -- instructional, whatever the term the Zoning Commission came up with. You know, they get very creative.

MEMBER HINKLE: A group instructional center.

ZC CHAIR HOOD: Under section 35.4 in the R-5-D District at premises 300 M Street, S.W., First Floor, Square 546 in Lot 302 and ask for a second.

MEMBER HINKLE: Second.

BZA CHAIR JORDAN: Motion made and seconded to grant the relief as amended. Ready for the question?

ZC CHAIR HOOD: Question.

BZA CHAIR JORDAN: All those in favor, signify by saying aye?

(Chorus of ayes.)

BZA CHAIR JORDAN: Those opposed, nay?

(No audible response.)

BZA CHAIR JORDAN: The motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as 4-0. This is to approve the application as amended as a group instruction center. Motion made by Chairman Hood. Seconding that motion is Mr. Hinkle. Also in support, Chairman Jordan and Vice-Chair Allen. And we have a Board seat vacant. Motion carries on a vote of 4-0.

BZA CHAIR JORDAN: Very good.

And a summary order, please?

MR. MOY: Yes, sir.

BZA CHAIR JORDAN: Thank you.

Thank you. Seven hundred?

MR. MOY: The next application for hearing is application No. 18700. This is the application of Thomas Kelly, pursuant to § 3104.1. This is a special exception for an accessory apartment under subsection 202.10.

BZA CHAIR JORDAN: Please identify yourself? Make sure your microphone is on, please.

MR. KELLY: My name is Thomas Kelly.

BZA CHAIR JORDAN: Did you turn your witness cards to the court reporter?

MR. KELLY: Yes, sir.

BZA CHAIR JORDAN: Thank you.

This is another one I think by your filing meets the criteria for you to receive the special exception. I don't see there's a need -- from me, I don't have any questions. I don't know if the Board wants to hear anything additionally from you.

Board, anything you need to drill down?

(No audible response.)

BZA CHAIR JORDAN: I'm seeing heads shaking meaning no. So this is one which we can go ahead and move on because we believe that your filings have been significant to show that you should be granted the relief that you request.

So with that, we'll turn to Office of Planning and see if there's anything in addition with the new-fangled Office of Planning report that you used. See, you didn't think I noticed.

MR. MORDFIN: Good morning. I'm Stephen Mordfin with the Office of Planning. The Office of Planning supports this application and rests on the record. Thank you.

BZA CHAIR JORDAN: With a colorful report. No.

Any questions from the Board of the Office of Planning?

(No audible response.)

BZA CHAIR JORDAN: The applicant, any questions of Office of Planning?

MR. KELLY: No.

BZA CHAIR JORDAN: Is there anyone here from Department of Transportation?

(No audible response.)

BZA CHAIR JORDAN: We do have in our record a letter of no objection to the relief being requested by Department of Transportation.

Anyone here from ANC-4C?

(No audible response.)

BZA CHAIR JORDAN: ANC-4C?

(No audible response.)

BZA CHAIR JORDAN: We have a letter from ANC-4C in which we would give great weight to by a vote of 7-1 who supports your application.

Then turning back then, unless there's something else you think you need to say, then we will close the record on this matter. And I would move that the Board grant the relief requested in 18700.

ZC CHAIR HOOD: Second.

BZA CHAIR JORDAN: Motion made and seconded. Any further discussion?

(No audible response.)

BZA CHAIR JORDAN: All those in favor, signify by saying aye?

(Chorus of ayes.)

BZA CHAIR JORDAN: Motion carries. Mr. Moy?

MR. MOY: Staff would record the vote as 4-0. This is on the motion of Chairman Jordan to approve the application for the relief requested. Seconding the motion, also Chairman Hood. Also in support on the vote count, Vice-Chair Allen, Mr. Hinkle, Board seat vacant. Motion carries on the vote of 4-0.

BZA CHAIR JORDAN: Seven-oh-one, please?

Oh, thank you. Thank you.

MR. MOY: Waive requirements for a summary, sir, or --

BZA CHAIR JORDAN: Oh, yes, summary, please.

MR. MOY: All right. Thank you.

BZA CHAIR JORDAN: Yes, that's a summary order.

MR. MOY: I just have to check.

BZA CHAIR JORDAN: Can you see the high sign?

MR. MOY: Okay. The next application is 18701. This is the application of 1247 ESE, LLC. This is for a variance from the use provisions. I'm going to read this as captioned in the advertisement. Variance for the use provisions to operate a coffee shop/caf  in the first floor space within an existing apartment house under subsection 330.5.

BZA CHAIR JORDAN: Please identify yourself. Make sure your microphone is on, please. Try another push.

MR. HATEM: Okay. Hatem Hatem. I am the managing partner of 1247 ESE, LLC that owns the property on 1247 E Street, S.E.

BZA CHAIR JORDAN: Okay.

MR. SULLIVAN: Marty Sullivan of Sullivan & Barros on behalf of the applicant.

BZA CHAIR JORDAN: All right. Board, is there anything that we need to hear on this one, issues that you want to discuss?

(No audible response.)

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BZA CHAIR JORDAN: Here's my problem: The fact that this property has already by this Board declared that it's unique and allowed for another variance, I think the Board's kind of hard-pressed to say the property is not unique and hasn't changed its condition based upon what the Board approved before. So that gives you that. But can you point out the undue hardship?

MR. SULLIVAN: Sure. It's similar to what was for the 1992 variance. It's the difficulty in adapting it to residential use for the first time and using it as a residential use. The windows are large show windows for retail and they can't be changed because the property is in the historic district. So there's restrictions on changing that regardless of price.

The space, because it was originally built as commercial in 1897, is at grade as opposed to all the residential uses on the street which are above grade and allow light into the basement. And it's on the corner, too, so there's a lack of privacy with a residential use. And of course there's the financial difficulty in converting it to a residential use as well.

BZA CHAIR JORDAN: That's kind of where I see this kind of bumping. I didn't see any financials in your filing.

MR. SULLIVAN: Well, I mean we didn't think that that was necessary and they weren't submitted in 1992 either, I don't believe, because the practical difficulty is obvious. There's no plumbing facilities for residential use, so you'd have that expense. There's a 12-foot ceiling.

But aside from the financial, even if you did convert it to residential, there's certain things you just can't do because of the historic district restrictions that make it an undue hardship to adapt it to residential use.

BZA CHAIR JORDAN: Yes, because the standard is undue hardship, not practical difficulty.

MR. SULLIVAN: Right, but it can't be adapted to the residential use is the standard. It can't reasonably be adapted. And I think that was the finding in '92 as well.

BZA CHAIR JORDAN: Board, any other questions?

(No audible response.)

BZA CHAIR JORDAN: I just think, as you know, Mr. Sullivan, each case stands on its own bottom. And I was giving you some slack in regards to the previous case order. And that's based upon what was presented at that time for that applicant's ability to use the property or show its undue hardship. And simply trying to piggyback that, it just gives me some concern.

Board, any other questions or issues? Mr. Hinkle?

MEMBER HINKLE: Yes, thank you, Mr. Chair. You know, I do see the somewhat unique condition of the site, but we do typically in these cases like to see some financials on this. I think that would be helpful because there are a number of similar, I would call them, buildings within Capitol Hill that have been converted to residential use, that were commercial spaces, that have sat on corners. And, you know, I think the argument is almost there, but I'm not quite convinced. And I would like to see some financials that would show the undue hardship. I think that's where I'm at right now.

BZA CHAIR JORDAN: Yes, if there's no other questions, let's continue, but I think we're going to need the financials, Mr. Sullivan. Some financials in this would make the Board more comfortable going forward. But if you want to provide us some now, if you have --

MR. SULLIVAN: No, we have testimony on estimates of what some of the things would take to do, but we don't have them written down. We can get them for you. Although we're not piggybacking on the 1992 practical difficulty, their practical difficult wasn't related to the use they were going to, the office use. It was related to the use that they had to avoid, the residential use. And so it's the same analysis. And it's a similar analysis to the case that I put in the record in the prehearing statement 18275 where I don't believe they submitted financial information in that case either. But we can provide some testimony. And if it's not enough, we can --

BZA CHAIR JORDAN: Yes --

MR. SULLIVAN: -- I'd be happy to supplement the record.

BZA CHAIR JORDAN: -- you can provide the testimony. I think the Board still wants to see the estimates, the hard - - okay.

MR. SULLIVAN: Mr. Hatem, do you have any information or testimony about expected expenses that it would take to adapt this existing commercial space into residential use?

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MR. HATEM: Not specifically. We don't have the numbers at this point at hand, but we can provide them. The issue here is even if you convert this into residential space you have a north façade that's totally glass and you have two major show windows, one big show window on the right-hand side and another door on the right-hand side. It's really, really odd to be living in that space, specifically that you're on grade level. Basically everybody on that corner, be it a car or a pedestrian, is going to see you. And the basement has no windows and has no source of light. So it's going to be totally lost in a residential -- not totally, but you know, it's residential value is extremely limited because you cannot put bedrooms down there. So I'm kind of struggling in specifically what financials do we need to provide, because even --

BZA CHAIR JORDAN: We need the financials that are going to show that this is an undue hardship either from your -- what it's going to cost to do a conversion, what it would cost to put this in a use based upon what the Zoning Regulations have. It includes reasonable profit. So your attorney is quite aware of what we require and what we're asking for. And if you'd want to go forward based upon this testimony, we're glad to do so, Mr. Sullivan

--

MR. SULLIVAN: No, we're happy to submit the information. I just want to make sure that this is being heard according to the other cases that were heard today, which I didn't hear any financial information --

BZA CHAIR JORDAN: Mr. Sullivan -

-

MR. SULLIVAN: -- submitted for those use concerns.

BZA CHAIR JORDAN: Mr. Sullivan, you know these cases, each one is standing on its own bottom. And you've been with us enough to know they stand on its own bottom.

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MR. SULLIVAN: I understand  
that --

BZA CHAIR JORDAN: Right now  
we're dealing --

MR. SULLIVAN: -- but if they're  
decided differently, that's --

BZA CHAIR JORDAN: Right now  
we're dealing with 18701, and that's your  
case.

MR. SULLIVAN: We're happy to  
submit additional information.

BZA CHAIR JORDAN: All right.  
Then let's turn to Office of Planning and  
see if they're -- something in addition you  
want to add to your report.

MR. MORDFIN: Hi. Good morning.  
Again, Stephen Mordfin with the Office of  
Planning. And the only thing additional I  
have is I did hear from the Department of  
Transportation concerning the loading, and  
they had no issues regarding any loading  
that would take place at this site. Thank  
you.

BZA CHAIR JORDAN: So you said Department of Transportation -- say that again?

MR. MORDFIN: I received an email from the Department of Transportation indicating that they saw no issues with loading at the site.

BZA CHAIR JORDAN: Okay. Yes?

VICE CHAIR ALLEN: This is in reference to the fact that there's no alley access?

MR. MORDFIN: Correct.

VICE CHAIR ALLEN: So it would have to come from the front or the street or something like that?

MR. MORDFIN: It would have to be from the street, and DDOT didn't see that that would be --

BZA CHAIR JORDAN: Be a problem?

MR. MORDFIN: Right.

VICE CHAIR ALLEN: Okay. Thank you.

BZA CHAIR JORDAN: Board, any other questions of the Office of Planning?

MEMBER HINKLE: The conditions that you've noted in your report, those are the same as the applicant has put forward? I just haven't compared the two, I'm sorry.

MR. MORDFIN: Yes, they're generally the same. The only difference is I did amend condition No. 2 having to do with the trash cans, that they do need to be concealed and not visible to the public. Habit would be to set space as all public space. So and it's also in an historic district. So however it is that they work it out Public Space and with the Historic Preservation to meet their standards.

MEMBER HINKLE: Okay. And is the applicant open to that condition?

MR. SULLIVAN: Yes.

MR. MORDFIN: These seven conditions.

MR. SULLIVAN: Yes.

BZA CHAIR JORDAN: Okay. And anyone here from Department of Transportation?

(No audible response.)

BZA CHAIR JORDAN: We do have a recommendation of no objection to the relief.

Anyone here from ANC-6 -- I'm sorry, Mr. Sullivan, you have any questions of Office of Planning?

MR. SULLIVAN: No, Mr. Chairman. Thank you.

BZA CHAIR JORDAN: Anyone here from ANC-6B?

(No audible response.)

BZA CHAIR JORDAN: ANC-6B by a vote of 10-0 recommends approval.

Is anyone here wishing to speak in support of this application?

(No audible response.)

BZA CHAIR JORDAN: Anyone wishing to speak in support?

(No audible response.)

BZA CHAIR JORDAN: Anyone in opposition?

(No audible response.)

BZA CHAIR JORDAN: Anyone in opposition?

(No audible response.)

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BZA CHAIR JORDAN: Turning back to Mr. Sullivan for any rebuttal or closing.

MR. SULLIVAN: Thank you, Mr. Chairman. As mentioned, we'd be happy to submit financial information to further support the undue hardship argument.

I do want to point out one item that I'd like to make clear in an approval, if the Board was so inclined. This is going to operate technically as a restaurant. That will be the official definition. Although, because of the hours and because of the planned menu it will look more like a prepared food shop.

BZA CHAIR JORDAN: But you need to amend the application.

MR. SULLIVAN: Well, no, in the prehearing statement I think I put restaurant. But if the Board would like to do that --

BZA CHAIR JORDAN: Yes, we need to have you amend the application.

MR. SULLIVAN: Okay.

BZA CHAIR JORDAN: I'm glad you raised that. Thank you.

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MR. SULLIVAN: Okay. But one item that's -- because it's a coffee shop/caf -type place, people will pay for items before they eat which could arguably throw us into fast food restaurant. So and that's the one thing I think we have available with a use variance is that this Board gets to define exactly what that use is. So we'd like to have that as a condition. There's two ways you can do it: You can call this a prepared food shop with the additional condition that we may have some cooking appliances beyond a toaster or a microwave.

BZA CHAIR JORDAN: Yes, I was looking at the different things you're going to do, and it's kind of all over.

MR. SULLIVAN: Right, it's a hybrid.

BZA CHAIR JORDAN: It's really a restaurant.

MR. SULLIVAN: Technically it's a restaurant, but because it closes at 8:00 and because it's a neighborhood facility, it will look like a café. But, yes, it will, which is a restaurant.

BZA CHAIR JORDAN: I think you're probably safer this being --

MR. SULLIVAN: So we'd like to ask the additional condition that if it -- it may have a pay-first-before-you-eat aspect to it. There's the Watkins Recreation Center across the street. There's a farmer's market nearby. And this will have a lot of --

BZA CHAIR JORDAN: I'll tell you what:

MR. SULLIVAN: -- traffic for a small --

BZA CHAIR JORDAN: You examine it. Let me offer this: You examine it and you make a decision which way you're going to go, and you guys have to live with that, as well as when you submit the financials on this.

MR. SULLIVAN: Okay.

BZA CHAIR JORDAN: And we can get those turned in. I don't know if we need to put this for an additional hearing. If we just get the additional documents, then we can move this to a decision calendar.

Is there anything else you wanted to add?

MR. SULLIVAN: No, that's all I have. Thank you.

BZA CHAIR JORDAN: Then we'll close the hearing based upon what we've received here today and the record as it stands, but the record will remain open for the addition of the financials that are adequate enough to provide the undue hardship. As you know, it's the conversion use and etcetera, Mr. Sullivan.

And a date, Mr. Moy?

MR. MOY: Mr. Chairman, staff would suggest if the applicant can submit the supplemental information let's say by this Friday, I would suggest for the Board that the Board could take this up for decision next week on the 11th. Otherwise -

-

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BZA CHAIR JORDAN: Excuse me a second. I think that might be a little too quick. That's just a week. You need at least a couple of weeks?

MR. HATEM: I mean by this Friday, no. By next Friday probably I'll have you something. Within --

BZA CHAIR JORDAN: Well then, put this out two weeks.

MR. MOY: Two weeks?

BZA CHAIR JORDAN: At least two weeks.

MR. MOY: Okay. The practical difficulty here, sir, is that there's no hearing on the week of the 18th. The 25th you have a full -- you have 13 cases on the 25th of February.

BZA CHAIR JORDAN: How did that happen?

MR. MOY: Pixie dust, I guess. So if that doesn't work, we're looking at March 4th at the earliest.

BZA CHAIR JORDAN: Well, the Board is saying they think they can do that.

MR. MOY: They can? Well, yes,  
that's fine.

BZA CHAIR JORDAN: That they can  
do that.

MR. MOY: Oh, oh. Okay. I'll do  
whatever the Board wants.

BZA CHAIR JORDAN: Yes, so which  
one --

MR. MOY: You want to do February  
25th?

BZA CHAIR JORDAN: Is that the  
one we got 13 cases?

MR. MOY: Yes, sir.

BZA CHAIR JORDAN: What's another  
one?

MR. MOY: That's what I used to  
say.

BZA CHAIR JORDAN: Just bring  
lunch and dinner and then, you know? Let's  
move it to the 25th and we'll work around  
it. We'll get it done. Okay? And so that  
means you need to have your information to  
the Office of Planning by the 18th?

MR. MOY: Eighteenth, sir.

BZA CHAIR JORDAN: Eighteenth.  
February 18th. Okay? Good. Thank you. We  
appreciate it.

And we'll stand down until 11:00.  
We're going to take a recess until 11:00.

(Whereupon, at 10:54 a.m. off the  
record until 11:03 a.m.)

BZA CHAIR JORDAN: Mr. Moy, let's  
call 18683, Holy Name Parish.

MR. MOY: Yes, sir. As you just  
stated, that's application No. 18683 of Holy  
Name Parish. This is for a special  
exception to establish a private school  
under section 206, at 1125 Neal Street, N.E.

BZA CHAIR JORDAN: All right.  
Let me say before you introduce yourselves,  
this is one which I'm going to recuse myself  
on this matter. And so the Board still has  
a quorum and able to hear it and go forward  
with it. I recuse myself because of a  
conflict of interest with the attorney  
representing this is one of my partners in  
my firm, and so I'll recuse myself.

VICE CHAIR ALLEN: Great. So I will preside over this case. Welcome. Can you please identify yourselves for the record?

MS. WALLER: My name is Rose Waller and I represent the applicant with the firm of Motley Waller.

VICE CHAIR ALLEN: Thank you.

FATHER BRIESE: I'm Father Michael Briese. I'm the pastor of Holy Name Parish.

VICE CHAIR ALLEN: Welcome, father.

MR. FOUSHÉE: Marrel Foushee. I'm on the board of directors.

VICE CHAIR ALLEN: Great. Thank you, Mr. Foushee. Good to see you, Father Briese.

Okay. And everyone that is required has filled out your forms and all of that? Great.

We've reviewed this record. As Mr. Chairman often comments, we spend a great deal of time in prep for these cases. And I don't really see any major issues and feel that the record is pretty full meeting your burden.

Do the Board have any specific questions, however, that we want to bear down on?

(No audible response.)

VICE CHAIR ALLEN: Okay. Unless you want to make any kind of an opening statement. As Mr. Chair is often known to say, you may want to like, you know, let discretion be the better part of valor there. Okay. Good.

OP, would like you to make any statement, please?

MR. GOLDSTEIN: Good morning. My name is Paul Goldstein with the Office of Planning. We recommend support of the special exception application. We put in one condition just to limit the number of students and faculty to what they proposed just as a limit.

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And the other thing is I believe DDoT filed a report with some conditions that maybe the applicant can address as well. I'm now available for any questions you may have.

VICE CHAIR ALLEN: Great. Board have any questions?

ZC CHAIR HOOD: Yes, I'm just trying to remember what -- DDoT wanted the condition? Well, I guess we don't get there, but do you accept the conditions? Have you all seen the DDoT report?

MS. WALLER: Yes, we have.

Actually I received an email from Louis Booker, who was here earlier. He provided me with an email that he withdrew one of the recommendations, which was the last recommendation for a transit screen. But we have accepted the recommendations. One was to select one person of the staff as the transportation director. The second one was to allow the maximum Metro SmartBenefits for faculty and staff who are committed to using public transportation. And three, an informational display kiosk of Metrorail, Metrobus information and alternative transportation modes.

ZC CHAIR HOOD: This sound good, Madam Chair. The first one was the one I was interested in. Thank you, Madam Chair.

VICE CHAIR ALLEN: Great. Thank you. Any other questions by the Board for OP?

(No audible response.)

VICE CHAIR ALLEN: And the applicant, any questions for OP?

MS. WALLER: No.

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VICE CHAIR ALLEN: Okay. Great.  
We've just heard that Department of  
Transportation has -- recommends no  
objection, however, they do have the TDMs  
that we've already discussed.

MS. WALLER: I'm sorry, I just  
received an email from Louis Booker this  
morning stating that they withdrew the last  
recommendation. So if you need a copy of  
that, I can provide you.

VICE CHAIR ALLEN: Yes, if you  
could give Mr. Moy a copy, that would be  
great. Thank you.

MS. WALLER: Yes.

VICE CHAIR ALLEN: Mr. Moy, we  
don't have a copy of that, do we?

MR. MOY: I don't have it with  
me, but I recall seeing it --

VICE CHAIR ALLEN: Okay.

MR. MOY: -- being entered into  
the record.

VICE CHAIR ALLEN: Then we're  
good. Thank you.

Is anyone here from ANC-5D?

(No audible response.)

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VICE CHAIR ALLEN: I understand that there is no letter on file. Is that correct, Mr. Moy?

MR. MOY: That's correct.

VICE CHAIR ALLEN: Did you have an opportunity to meet with the ANC?

MS. WALLER: We met with the single member district. We have scheduled two meetings with the full ANC subsequent to that initial meeting and they were canceled. One was canceled without notice by the ANC. And we haven't, you know -- they haven't rescheduled or we haven't heard anything. We've sent them emails with regard to meeting with them one on one and with the full body. We've sent letters and, you know --

VICE CHAIR ALLEN: Okay. Thank you. And we take that for the record. Thank you.

And then I guess we can ask is anyone here wishing to speak in support of this application?

(No audible response.)

VICE CHAIR ALLEN: Anyone wishing to speak in support?

(No audible response.)

VICE CHAIR ALLEN: Do we have anyone wishing to speak in opposition to this application?

(No audible response.)

VICE CHAIR ALLEN: Anyone wishing to speak in opposition?

(No audible response.)

VICE CHAIR ALLEN: So we can turn back to the applicant for rebuttal. Any kind of a final statement?

(No audible response.)

VICE CHAIR ALLEN: All right. So based on the record and our review and the record as it stands with the recommendations for approval, I wold move that we approve with the conditions that the school be limited to the 100 students and 9 staff; we have no issues with that, as proposed and the TDMs recommended by Department of Transportation. Is there a second?

ZC CHAIR HOOD: Second.

VICE CHAIR ALLEN: Thank you.

All in favor?

(Chorus of ayes.)

VICE CHAIR ALLEN: Anyone opposed?

(No audible response.)

VICE CHAIR ALLEN: No? All right. Mr. Moy, please -- I think we can do that with a summary order, is that correct, or do we --

MR. MOY: Yes, you can do a summary. The vote count is 3-0. This is on the motion of Vice-Chairperson Allen to approve the application with the conditions as she cited. Also in support Mr. Hood seconding and Mr. Hinkle in support. We have a Board Member recused and a Board seat vacant. Motion carries 3-0.

VICE CHAIR ALLEN: Thank you.  
Thank you very much.

BZA CHAIR JORDAN: All right.  
Let's proceed. Let's call 18688, please,  
Mr. Moy.

MR. MOY: Yes, sir. Application before the Board is application No. 18688. This the application of Lock 7 Development, LLC. This is for a number of variance relief, which I will not read. This is to allow mixed-use residential and ground floor retail development in the C-2-A District at premises 1348 through 1356 Florida Avenue, N.E., Square 4068, Lots 116, 144, 145, 146 and 147.

The previous hearing, Mr. Chairman, was -- this is continued from January the 14th.

ZC CHAIR HOOD: Mr. Chairman, I know you all have heard some of this case. I did not participate and I will be just sitting here until you all finish this case.

BZA CHAIR JORDAN: Would you please identify yourselves?

MS. MOLDENHAUER: Good morning. My name is Meridith Moldenhauer from the law firm of Griffin, Murphy, Moldenhauer & Wiggins. I represent the applicant.

MR. GORMAN: Good morning. My name is David Gorman. I'm one of the principals at Lock 7 Development.

MR. CONWAY: My name is Patrick Conway. I'm the other principal of Lock 7 Development..

MR. MERRITT: My name is Paul Merritt. I'm a senior lender with Capital Bank.

MR. REISHMAN: My name is Lindsey Reishman. I'm the principal broker of Lindsey Reishman Real Estate.

MR. SCHNECK: My name is Ron Schneck. I'm principal with Square One 34 Architects.

BZA CHAIR JORDAN: Okay. This is our second time up with this and we had some supplemental filings. And we appreciate that. Thank you. It really helped me a lot. Let met catch up with my notes. Where's my notes?

MS. MOLDENHAUER: In addition to any of the supplemental filings, obviously we feel like we've kind of addressed some of the questions in regard to alternatives identified in Tyler and some of the other cases for the economic hardship for showing practical difficulty.

We also have some additional testimony along those same lines in answering and kind of walking through some of the questions that were addressed by Board Members at the past hearing, if the Board would like us to proceed. And we have brought some of our experts here to provide additional testimony and to answer any questions of the Board Members.

BZA CHAIR JORDAN: Right. The record is full of the issues. And we understand the alternatives and the -- at least I'm speaking for myself when I say that. I'm really not home yet on the decibel noise level. I understand your argument. I know what they measure. So I don't need you to go through that and how it affects the property. You also supplemented the record with the alternatives and the financials and the rate of return based upon those, which we do have that in the file. And then the effect of the setback, how it affects you economically with the loss and the inability to do the additional 22 spaces.

Let's drill down more and have some conversation about why you need the height relief. As you know, OP has opined that they -- not to grant the relief regarding the height issue.

MS. MOLDENHAUER: Yes.

BZA CHAIR JORDAN: And so that would be one thing I particularly want to hear.

And anything else the Board needs to drill on?

MS. MOLDENHAUER: Okay. So what I'll do is I'll turn to Ron Schneck, our architect, and he'll kind of walk through some of the height issues.

MR. SCHNECK: Good morning. I can quickly sort of walk through some of sort of the primary design modification that was sort of discussed the last time we were.

One of the issues with the --

BZA CHAIR JORDAN: Excuse me. Let me ask you.

MR. SCHNECK: Sure.

BZA CHAIR JORDAN: So you have altered the design some from our last hearing?

MR. SCHNECK: We have, yes.

BZA CHAIR JORDAN: Okay. Do we have those plans? Did we get those?

MS. MOLDENHAUER: Yes.

BZA CHAIR JORDAN: I didn't notice that. Okay.

MS. MOLDENHAUER: Those were part of the supplemental. They were Exhibit A.

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BZA CHAIR JORDAN: Oh, I must have missed that. Okay.

MS. MOLDENHAUER: Exhibit A to the supplemental.

BZA CHAIR JORDAN: I know I was digging in on the noise study and I was digging in on your financials.

MS. MOLDENHAUER: It's also on the PowerPoint slide --

BZA CHAIR JORDAN: Okay.

MS. MOLDENHAUER: -- if you want to look up and see.

BZA CHAIR JORDAN: Okay.

MS. MOLDENHAUER: That's Exhibit A.

MR. SCHNECK: It's a pretty simple design modification. One of the concerns last time was one of the things that we did to address the sort of perceived height was set back the top floor about five feet. And then we also had a trellis that we wanted for architectural purposes. And one of the concerns of one of the Board Members was that that sort of, you know, makes it seems tall again. So we have removed that. And this slide shows that. It shows the previous rendering as well as the revised rendering without that trellis.

And then the next slide shows basically that same modification at the sort of more of an aerial perspective showing the removal of the trellis on the right image so that the sense of perceived height of setting back that top floor is maintained.

BZA CHAIR JORDAN: Give me one second.

MR. SCHNECK: Okay.

BZA CHAIR JORDAN: I want to pull it up so I can look at it closer. I'm trying to find it. Which exhibit is that? That's --

MS. MOLDENHAUER: Exhibit A to the supplemental filing.

BZA CHAIR JORDAN: Which I think is Exhibit 36. Yes. Okay. Let me open that.

MS. MOLDENHAUER: Would you like a hard copy? I only have one.

BZA CHAIR JORDAN: No, i don't deal with hard copies anymore. As you know, the Board is going generally completely automated. As you're aware, we did our test run through. And we came out okay, right? We've had a couple of filings.

MR. MOY: That's still in progress, Mr. Chairman, but it's looking good.

BZA CHAIR JORDAN: This is on IZIS, too, so --

MS. MOLDENHAUER: Yes, this was filed on IZIS, which was fantastic because we did not print out 12 copies of anything. We just filed electronically.

BZA CHAIR JORDAN: Okay. Let's proceed.

MR. SCHNECK: At the last hearing the Board also asked whether the applicant could comply with the Zoning Regulations through an alternative design. So what we were --

BZA CHAIR JORDAN: I'm sorry. I know why we missed it, because this actually was filed not as part of your supplemental -- filed or whatever -- whether you did it or the office did it, they broke it up and made it another exhibit.

MS. MOLDENHAUER: And I believe that's how typically it's supposed to be done where there's multiple exhibits because I think you can't have it be so large. But we'll --

BZA CHAIR JORDAN: I don't know, but -- oh, because you did it online?

MS. MOLDENHAUER: We did it online.

BZA CHAIR JORDAN: That's --

MS. MOLDENHAUER: Yes, that's what it is.

BZA CHAIR JORDAN: That's what we got to work through.

MS. MOLDENHAUER: Because it's online.

BZA CHAIR JORDAN: Yes.

MS. MOLDENHAUER: So we had to file it as --

BZA CHAIR JORDAN: Got you.

MS. MOLDENHAUER: -- the supplemental, then the exhibits to the supplemental. So it gets filed as multiple different documents --

BZA CHAIR JORDAN: Oh, okay.

MS. MOLDENHAUER: -- instead of having them filed as one document based on IZIS.

BZA CHAIR JORDAN: I didn't know that. But I do see them. Thank you.

MS. MOLDENHAUER: Okay.  
Fantastic.

BZA CHAIR JORDAN: I don't know I missed that, but okay.

MR. SCHNECK: So since the last meeting we have worked with Dave and Patrick to come up with some matter-of-right designs, or at least designs that need less zoning relief that would decrease the practical difficulty caused by strict application with the Zoning Regulations. And we have three alternatives, and I'll go through those briefly.

And alternative 1 is matter-of-right as to height and FAR. And here we are removing the existing first floor façade. We're demolishing it and we're providing a building four stories in height of equal height approximately 10 feet. And this is of wood frame construction. The result here is that we only have 39 units as opposed to the 49 proposed. And just sort of a note on this one: Because of the BRL and other factors we're unable to -- this matter-of-right project we're actually not even able to get to the 3.0 FAR permitted.

The next slide shows the section. And what this shows is the four stories and basically that they're -- you know, based on the matter-of-right FAR and height we are unable to achieve the fifth floor.

Alternate 2 is a scheme that is matter-of-right as to height, but requires an FAR relief. Again, in this one the existing first floor façade will be demolished and we will be providing five stories of equal height, approximately eight feet. This scheme would be using a metal composite floor framing system. The five stories of brick -- of stick would not be recommended in this condition, which is why we're using the composite metal flooring system.

Here the flooring assembly as a result is thicker to accommodate the ducts below the structure.

BZA CHAIR JORDAN: Are you on 1-2 or 2-3?

MR. SCHNECK: I'm on --

MS. MOLDENHAUER: Alternative 2.

MR. SCHNECK: -- alternative 2,  
the plan sheet.

BZA CHAIR JORDAN: Okay. 1-2.

Okay.

MR. SCHNECK: Yes.

BZA CHAIR JORDAN: What happened also in IZIS it broke up. So in between some of the exhibits that have the floor plans, you have financial information. Yes, it's crazy. So you don't go from like 36, 37, 38 with all the renderings and plans you got in between those. So we got to work that out.

Well, it is a test case, so thank you.

MS. MOLDENHAUER: We're happy to be the guinea pigs on that regard, but it doesn't --

BZA CHAIR JORDAN: No, we got another filing that went --

MS. MOLDENHAUER: -- looking through the documents. That's --

BZA CHAIR JORDAN: I think you're like the second or third case, but we're working it out. I guess we need to put some direction. In fact, I don't know if our system does as you do with the court. Once you do the main filing, you can then put all the attachments, but then later it will pull it all back together for you. So maybe we need to look at something like that. I don't know if we have it or just -- because otherwise I can see the court jumping back and forth trying to find these documents and they'll go crazy.

Give me one second. I need to find 1-2. Yes, some of your plans are 36, 37. And there's 43 and 44. Forty-four you think it is? Yes, it's 44. Yes, it's 44. Cool. All right. We're with you. I'm with you.

Okay. Could you go back and discuss that --

MR. SCHNECK: 1-2?

BZA CHAIR JORDAN: Yes.

MR. SCHNECK: Thank you. So this is on alternative 2, which is matter-of-right as to height, but requiring FAR relief. And as in the alternate 1, the existing first floor façade will be demolished and we will be providing five stories of equal height, approximately eight feet, using a metal composite flooring system as recommended by the general contractors that we've been talking to in terms of pricing.

Flooring assembly here is thicker because we need to accommodate the ducts below the metal framing system. And what's incredibly relevant here is that with this scenario we are unable to provide the retail space at the first floor, which we, you know, have been trying to provide based on community input.

And the next slide shows basically a section of that alternate 2. And again, just to sort of quickly note, we're showing essentially an eight-foot ceiling height, which is allowable, however I can't remember, you know, the last time we provided an eight-foot ceiling height in new construction. It's just not very feasible from a marketing standpoint.

So then we'll go on to the alternate plan 3. This is one is matter-of-right as to FAR, but requires --

BZA CHAIR JORDAN: How many units? Is that 48 units on 1-2? Yes, it's 48 units.

MR. SCHNECK: 1-2 is --

BZA CHAIR JORDAN: Forty-nine units. Excuse me. Forty-nine?

MR. SCHNECK: Yes. Yes.

BZA CHAIR JORDAN: Okay.

MR. SCHNECK: Forty-nine units.

So we'll be at 1-3. This is alternate 3 and this is matter-of-right as to FAR, but would require height relief. Again, here the existing first floor is maintained so we can have that 14 feet for retail space and we're four stories above that. This alternate is basically the same as what we're proposing, except in this case because of not getting the height relief, or requiring the height relief, our fifth floor would be a partial fifth floor, basically removing seven fewer units.

BZA CHAIR JORDAN: Okay. That's 42?

MR. SCHNECK: Correct. And again, this section shows essentially the construction section through the building, basically floor-to-ceiling heights is definitely better in this case and provides for the retail use on the first floor.

Again, the issue here is the fifth floor, and we have a slide if necessary. The fifth floor becomes basically very difficult, too. We wouldn't recommend building it because there's only essentially maximum of four units with -- that we would get even though we'd have to do, you know, stair and circulation and all of that.

Should I go on to the acoustical? Okay. Just to sort of elaborate, last time we were here there were numerous questions about sort of the acoustical analysis, and so I wanted to elaborate on sort of our exceptional condition No. 2, which is the proximity to the fire station and just to reiterate that this is recognized as one of the busiest fire stations in the country. Noise, lights, safety; there's a lot going on there, and, you know, the unique challenges with respect to the massing and materials used. Changes will need to be made to upgrade windows and different systems of the buildings to mitigate the sound.

And the next slide shows based on the Hush report, or the report by Hush Acoustics, just sort of to give a graphic of the impact on the structure due to the elevated noise levels caused by the fire station across the street and its location on Florida Avenue and the proximity to the starburst intersection. The purpose of this diagram is just to help illustrate the acoustical and architectural impacts on the building. Kind of obviously, but the impact will be highest on the Florida Avenue side; slightly less so, but still, you know, the noise will impact those units. And obviously on the rear of the building along essentially the alley will be impacted, but to a lesser degree. Front units basically are acting as the sound barrier for the units that are further away from the fire station and Florida Avenue.

And that concludes my portion, if you have any questions.

BZA CHAIR JORDAN: So what is the additional cost that's necessary due to the noise?

MS. MOLDENHAUER: If you'd like to answer that, Patrick?

MR. CONWAY: You want me to go into the financial feasibility on the slides or --

MS. MOLDENHAUER: Just address the general materials and different factors that would have to be considered.

BZA CHAIR JORDAN: Yes, we're up --

MR. CONWAY: Sure.

BZA CHAIR JORDAN: -- and the generators are spread on your alternatives and those financials, so we have those things on the three alternatives which you've provided.

MR. CONWAY: Would you like me to walk you through them or --

BZA CHAIR JORDAN: No.

MR. CONWAY: No?

BZA CHAIR JORDAN: No, they're straightforward. I mean I can understand them, and I'm pretty dumb. So, yes, I think we -- but I think you provided those. But I just wanted to know directly as it relates to the protection or the reducing any issues on the acoustical side.

MR. GORMAN: Sure. Well, I can touch upon that. The most expensive cost would be the windows. We'd need to use windows with a higher STC rating, which is a significantly more expensive cost. We'd also have to look at the façade as to what material we're using. And then inside of the façade we anticipate spending more money on the insulation along the walls that are highly affected. So I think the three big cost drivers there would be the windows, the façade and the insulation that would be required.

BZA CHAIR JORDAN: And the closest residential area to this is where? How far from this building and the fire house?

MR. GORMAN: Well, there's actually residential on Florida Avenue as well as Orren.

MS. MOLDENHAUER: I think right now there's a residential on Orren, which is the distance beyond, which is about 120 feet --

BZA CHAIR JORDAN: Right, that's what I thought. Yes.

MS. MOLDENHAUER: -- which is the property along with them with another 10-foot alley. So you'd have 130 feet of distance from Florida Avenue. And based on the Hush acoustical report, you can see that every additional 20 feet that you get removed from Florida Avenue the decibel level decreases substantially, which is why you can see when you get about 90 feet beyond Florida Avenue to the rear unit along Orren Street that impact level decreases based on the Hush report. And obviously the residential units that are on Orren are actually further obviously than that unit beyond a 15-foot rear yard and plus a 10-foot alley where the first residential units start down Orren.

BZA CHAIR JORDAN: Okay.

MS. MOLDENHAUER: At this point we'd like to turn to our real estate expert to talk about the same issue in regard to the sound and the noise and the impact that would have on marketability. So at this point we'll turn to Lindsey Reishman for his testimony.

MR. REISHMAN: My name is Lindsey Reishman. I'm the principal broker of Lindsey Reishman Real Estate. I've been selling real estate for about 10 years and overseen or sold about 500,000 in sales during that time, so about 1,000 transactions. And I've been involved with about a dozen condo projects as well.

And I guess the points that are clear to me are that, one, the retail space seems critical to this project. I would be very concerned trying to sell residential on Florida Avenue next to the fire station. And I think also the amenities that provides for the building would be critical from a resale perspective.

And the ceiling height was touched upon, that I can't recall being involved with a project or selling a project at eight-feet ceilings. I just think that that would be a real challenge from a retail perspective. Eight-foot-four I think is tight honestly, but potentially doable. So every inch really does make a big difference I think in the consumer's perception.

And I guess the other main point is the noise, you know, the immediacy of the fire station is obviously relevant, and I do worry that that's going to be real concern. So I think every measure that can be made to make that less of an issue is going to be positive from a resale perspective. So the further up the units are off the street, the more that can be done in terms of abatement with the building and the structure of the building. All those things are going to be positive when it comes to selling these places or renting them. I think everything that's relevant from a sales perspective is relevant from a rental perspective as well.

BZA CHAIR JORDAN: Let me ask the Board any questions so far? Anything?

(No audible response.)

BZA CHAIR JORDAN: Okay. Yes, a lot of this is already in the record. Yes.

Let me ask, did we do a parking study? Availability of parking?

MS. MOLDENHAUER: We have slides for that, if you'd like to go through. The last time we had Erwin Andres from Gorove/Slade present and he walked through the analysis of the utilization. And we went through -- I can kind of just quickly scroll down here. We went through the -- oh, my gosh. Let's see here. We showed you the location and the proximity to the transit location, considering that there's a significant number of buses in this area.

BZA CHAIR JORDAN: Just take me back to the parking availability, because I don't see that in my notes.

MS. MOLDENHAUER: Right here you can see actually pictures. And we've indicated there's over 60 percent of parking utilization on the street. This is Staples Street. This is a picture of Orren Street around 7:00 or so. And then this is another picture of Morse Street. We also went through and talked about utilization rates. Mr. Andres testified to this last time, so I'm just going to provide a summary, but you can see the areas that are on Morse Street and on Orren Street are in yellow, which means that there's 25 to 50 percent availability on those streets. We also had testimony that -- if you look at the dark blocks, that this is a unique area where all of the squares, all of the lots and squares to the north of this site actually all have alleys.

BZA CHAIR JORDAN: Right.

MS. MOLDENHAUER: And so they all have -- which I think also contributes to the fact that there is a lot of utilization of on-street parking, because all of the areas in the middle section; which are blocked in, you can see all have rear-alley access for off-street parking. And a lot of those properties do have off-street parking on their own. And that --

BZA CHAIR JORDAN: And if I remember that correctly, the alleys are kind of wide, too.

MS. MOLDENHAUER: They are wide, yes. And maybe you didn't see, obviously to the north of our site, it's quite a wide alley providing access. Now those alleys go all the way up about five blocks from this site, so majority of people in this neighborhood, if they choose to, have the ability to have off-street parking. And I believe that last time Mr. Erwin testified that, you know, based on their review they did see that a majority of people were using off-street parking. And so I think that that can be shown by -- after people are working, pictures here of the streets being fairly completely empty at around 7:00 at night when people typically would be home in other areas of the city where, you know, you'd have a much higher parking on the street. Just showing some pictures of that.

BZA CHAIR JORDAN: Okay. Board, anything else we need from the applicant?

(No audible response.)

MS. MOLDENHAUER: We also have testimony, or we have Paul Merritt present from Capital Bank to testify about --

BZA CHAIR JORDAN: We read that.

MS. MOLDENHAUER: Okay. If there's any other --

BZA CHAIR JORDAN: We understand ratios and got all that. So we get that. No, we appreciate it. And it's really helpful. The supplemental was very helpful for me and I'm glad you did that.

Board, anything? Any other parking issues? Yes, Ms. Allen, anything on parking?

(No audible response.)

BZA CHAIR JORDAN: I'm just trying to make sure we get all the questions done, because we have this un-comfort on giving parking relief.

Let me ask you something. I see that you also listed in your TDM; and I know that came from Department of Transportation -- putting in the electronic digital display. You guys okay with that?

MS. MOLDENHAUER: Yes, the applicant has agreed and would be willing to provide the digital display that --

BZA CHAIR JORDAN: For 49 people, or 39?

MS. MOLDENHAUER: Really what it is is it's just simply getting -- you get a television; I was down at DDOT the other day, and then it's the program that you then register with.

BZA CHAIR JORDAN: Right, but I thought minimally it was like \$5,000 to plug into their system. I think that's what the minimum was.

MR. GORMAN: You know, it would be expense, but we think it would be an amenity for the people living in the building and we're more than happy to provide it.

BZA CHAIR JORDAN: Your money. But I just know that, you know, when I saw those costs, I was like wait a minute, these things and -- because I know it's a process and a program that Department of Transportation is using and they're using it like across the board, but you got to weigh what you can spend to do those things.

The other thing in your conditions, you have first time to provide for first occupants of the residential unit, \$100 car share. And as you know, as we've been kind of operating that. That would be for all new tenants, not just the first wave of tenants. And so that would be something, if we move forward, we would probably invoke. Is that an issue with you?

MS. MOLDENHAUER: I think the question here then would be if you can provide flexibility. I think if there's a question as to whether this project is going to go for condominium or go for a rental unit. And so one of the reasons why we identify first time is because we don't know exactly, you know, which way this project is going to go. In regards to if it's a condominium, obviously that requirement on future buyers I think would be challenging from an obligation standpoint. So we'd prefer if obviously this is just a first-time application for this project, but that's a flexibility that obviously the Board --

BZA CHAIR JORDAN: That's an interesting question. Unless you incorporate into the condo docs as part of the declaration that the association would have to provide something like -- because it becomes an interesting question, because you get new tenants, all these things are going for the first -- not new tenants. Owners. New home owners. And then they sell and then now we have somebody that's a two-car family or something. I'm just --

MS. MOLDENHAUER: I think that it's challenging, is all I'm saying and I would request or ask either for flexibility or for it to simply maintain as a first-time buyers or tenants.

BZA CHAIR JORDAN: Maybe we have flexibility on buyers, but tenants --

MS. MOLDENHAUER: And what about if it's a buyer and then they have a tenant, they rent out the condo? Lawyers can always throw out other situations.

BZA CHAIR JORDAN: Anyway, we can cross that when we --

MS. MOLDENHAUER: So --

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BZA CHAIR JORDAN: Yes, that's interesting, you know, on the change of ownership. But you know, we have also been requiring some covenants to be actually recorded on these properties, so that may be in play.

Board, any other questions of the applicant that you want to ask? Ms. Allen?

VICE CHAIR ALLEN: I see that you have under the whole parking situation as well the 17 units. And I think last time we had some concern about being able to enforce that, but the bottom line is that it will be part of the -- whatever covenant that runs with the land for the life of the project. So at least that's what you have indicated here, which certainly would be of importance to me.

MS. MOLDENHAUER: Yes, we have agreed that we would provide a covenant that would run with the land for the life of the project for that, the partial RPP restriction. And the Board had in case 18544 approved a partial RPP restriction for another project as well.

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VICE CHAIR ALLEN: So when you say "partial RPP," you mean --

BZA CHAIR JORDAN: Everybody is not going to -- some people can get a --

VICE CHAIR ALLEN: You don't mean partial RPP. You mean part of the building, right?

BZA CHAIR JORDAN: When she says "partial," she means -- yes.

VICE CHAIR ALLEN: For half the building? Got it. I just want to be --

MS. MOLDENHAUER: So for only a certain number of those units in the building there would be a restriction.

VICE CHAIR ALLEN: Got it. Thank you.

BZA CHAIR JORDAN: I guess first come, first serve or something. I don't know how you manage it. Okay.

Any other questions? Mr. Hinkle, did you have a question?

(No audible response.)

BZA CHAIR JORDAN: Then if you're good, we can turn to Office of Planning.

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

OP received the supplemental submittal and has reviewed the information, however, OP's -- you know, based on our analysis with respect to the criteria for the relief for height and FAR, we still don't believe that the applicant has met the test. As stated in our original OP report we don't have an issue with the requested relief for parking. I can answer any questions that you might have.

BZA CHAIR JORDAN: Okay. What's your issue with the height relief request?

MS. VITALE: Well, with respect to the height and FAR, as you heard I think the applicant even present today, with scenario 3 they could construct this building, provide the ground floor retail and they even said today that, you know, while they might need height relief and could do that partial fifth floor, that's not something that they would even recommend building. So that it does sound like there still would be an opportunity on this site to construct a development that was with the height and FAR.

BZA CHAIR JORDAN: And did you take a look at what would be a reasonable return for them on alternative 3?

MS. VITALE: With respect to the criteria that OP evaluates, profit maximization for the applicant isn't part of our review criteria. We acknowledge that the applicant has submitted, you know, financial information that the Board can take into account as it reviews this application, but --

BZA CHAIR JORDAN: I hear you. I don't know if I agree with you; and, Mr. Hood, I know you're not participating in this, because that's part of the evaluation criteria. And what we take into your recommendation I think as a Board that you've looked at all of that. Because sometimes we find that OP will say, well, no, we don't agree or we seek denial and but it hasn't looked at the other aspect of it, the financial aspect of it, and it becomes really unreasonable for somebody to do it. So I'm hearing what you're saying, but I just think to be fair to applicants when the evaluations are done, is it a viable alternative? And viable alternative under the regulations and under the law requires a lot of consideration. So I don't want to put you on the spot, I just wanted to know if you did the evaluations.

MS. VITALE: We've reviewed the information that the applicant submitted. Obviously, you know, we didn't engage in our own financial analysis. That's not a step that OP has taken in its review to go out and seek, you know, independent financial information.

BZA CHAIR JORDAN: But what's your opinion about the financials that's submitted and as they provided the three alternatives?

MS. VITALE: I don't -- like I said I think they presented a third alternative that could potentially be within the height and FAR, and that third alternative actually, I think, looked the best financially. You know, they said they wouldn't recommend building that half fifth story, so if you look at alternative No. 3 -

-

BZA CHAIR JORDAN: Okay. I got you. Like I said, I didn't want to put you on the spot. I didn't know if you looked at it and evaluated it and had some other thoughts. Okay.

Board, any other questions of  
Office of Planning?

(No audible response.)

BZA CHAIR JORDAN: The applicant,  
questions of Office of Planning?

MS. MOLDENHAUER: No questions of  
the Office of Planning. The question would  
be does the Board want us to kind of respond  
to the Office of Planning's comment and  
provide some additional information to the  
Board in regards to alternative No. 3?

BZA CHAIR JORDAN: You already  
did that.

MS. MOLDENHAUER: Just --

BZA CHAIR JORDAN: I mean unless  
you want to add to it. But, no. Yes,  
that's where we have a potential loss of 8  
percent of the rental and an overall 3.6  
percent on condominium sales and a debt  
ratio of 0.96. Right?

MS. MOLDENHAUER: That would not  
be, as I guess Cohen often said, bankable.

BZA CHAIR JORDAN: Right. I know. I'm just saying we got it unless you want to add something else to that. So, okay. I'm good.

Where am I? Oh, Department of Transportation?

(No audible response.)

BZA CHAIR JORDAN: Didn't we do this already? I think we did. We did all this. Since the hearing is still continued, let's see is there anybody in opposition?

(No audible response.)

BZA CHAIR JORDAN: Anybody in support?

(No audible response.)

BZA CHAIR JORDAN: All right. Is there anything else the Board needs, just to kind of --

(No audible response.)

BZA CHAIR JORDAN: Is there anything else you think you want to add to this?

MS. MOLDENHAUER: We'd just like to confirm that the Board received a copy of the ANC support.

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BZA CHAIR JORDAN: Oh, yes, we did.

MS. MOLDENHAUER: It is now part of the record, which was not part of the record last time?

BZA CHAIR JORDAN: Yes, you submitted it with your document?

MS. MOLDENHAUER: Yes.

BZA CHAIR JORDAN: It was a 5-0. Oh, that's the thing that was conditional.

MS. MOLDENHAUER: It was conditional on going back and just having more dialogue with them about the design. And we had not yet had a chance to go back and show them this revised design without the trellis. So I believe that might also be part of kind of their -- a factor that they may appreciate. But we are planning on going back and finalizing the design and showing that to them.

BZA CHAIR JORDAN: Is there a meeting scheduled?

MS. MOLDENHAUER: No, it has not been scheduled yet. The last meeting I believe was around the snow storm, so we're trying to coordinate that.

BZA CHAIR JORDAN: Okay. Board, anything else?

(No audible response.)

BZA CHAIR JORDAN: All right. Then let's conclude this hearing. I don't know if I'm ready to deliberate on this matter at this point.

Let's put this for a decision, Mr. Moy. I'm sorry. I know it's challenging.

MR. MOY: No. No, not at all.

BZA CHAIR JORDAN: Where are we in the first of March?

MR. MOY: The 4th and the 11th of March the dockets are good for the Board.

BZA CHAIR JORDAN: Okay. Let's do that. And if you can supplement, if you have the meeting with the ANC before February --

MS. MOLDENHAUER: I don't believe that would happen. And I believe they wanted a final architectural plan, a kind of final decision, so I think that that would be something that we -- I don't think it was a question of going back at this point in time. I think it was going back and just keeping them updated, from my understanding.

BZA CHAIR JORDAN: Okay. Got you.

MEMBER HINKLE: Mr. Chair?

BZA CHAIR JORDAN: Mr. Hinkle?

MEMBER HINKLE: I was hoping we could get a copy of the presentation as well, the PowerPoint presentation. I think that would be helpful, if we could supplement the record with that.

BZA CHAIR JORDAN: All right. Thank you. And if you don't have it, you can just --

MS. MOLDENHAUER: We have four copies, or we have I believe five copies right now, so we can provide that.

BZA CHAIR JORDAN: You could shoot it to us.

MS. MOLDENHAUER: We'll send that to you at a later date.

BZA CHAIR JORDAN: Thank you. I think that's good.

MS. MOLDENHAUER: One of the things that we did not get to get to is part of the supplemental in regards to the PowerPoint presentation was some additional information on the figures, so we're going to provide that. Maybe we should actually walk through that at this point.

BZA CHAIR JORDAN: You already submitted financials.

MS. MOLDENHAUER: Yes, we just summarized them in a different way and identified certain issues.

BZA CHAIR JORDAN: Well, it's your hearing. We can do it, but I have the profit and loss statements, I have the -- basically pointed through alternatives. You doing something different than that?

MS. MOLDENHAUER: There was I believe one or two changes to them that we had.

BZA CHAIR JORDAN: Oh, okay.

MS. MOLDENHAUER: But they make it a worse case financial situation, so I wasn't going to take up the Board's time.

BZA CHAIR JORDAN: Okay.

MS. MOLDENHAUER: But if we're going to provide a PowerPoint slide, we can simply walk through that.

BZA CHAIR JORDAN: Oh, you want to --

MS. MOLDENHAUER: And I'll let Patrick Conway just simply reference those two, so that way when you see the PowerPoint slide, you'll understand the changes.

BZA CHAIR JORDAN: No, let's do it this way: Why don't you submit it to us so we can take a look at it? Just redo your financials on that and then we can go back -

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MS. MOLDENHAUER: Yes, I mean there's just two points. One was the IZ being 50 and 80 percent. We didn't account for the 50 percent, so it makes it lower.

MR. CONWAY: Across the board all four scenarios are worse off.

MS. MOLDENHAUER: Because of the IZ, that we didn't actually identify that -- we just had them all at 50 percent AMI versus --

MR. CONWAY: We had them all 80 percent.

MS. MOLDENHAUER: Eighty percent AMI.

MR. CONWAY: Yes.

MS. MOLDENHAUER: And now they're both divided based on IZ.

MR. CONWAY: Three and three.

BZA CHAIR JORDAN: Yes, just shoot it and then highlight the change.

MR. CONWAY: Okay.

BZA CHAIR JORDAN: That would be good.

All right. So then we said March 4th?

MR. MOY: Yes, decision on March the 4th.

BZA CHAIR JORDAN: And let's, if we can, get any additional filings on this one, Cliff. I would like to get it beforehand.

MR. MOY: Yes, well, that's --

MS. MOLDENHAUER: Is there any possible earlier date?

BZA CHAIR JORDAN: He's already indicated that we're pretty beat in February.

MS. MOLDENHAUER: We could get the filings to you this week. And if we could have it next week. We're able to move quickly. It's just a financial concern for the applicant.

MR. MOY: You could do it next week.

BZA CHAIR JORDAN: Only because it's you.

(Laughter.)

BZA CHAIR JORDAN: Okay. So let's do that.

MR. MOY: Okay.

MS. MOLDENHAUER: And have the filing to you by Thursday?

MR. MOY: Oh, Thursday would be better than Friday.

(Laughter.)

MS. MOLDENHAUER: By Thursday. I know you guys get your packages --

MR. MOY: Thank you very much.

MS. MOLDENHAUER: Thank you very much.

BZA CHAIR JORDAN: Okay. Thanks.

Let's call the last case on the docket.

MR. MOY: Yes, sir. That would be

Application 18702, of View 14 Investments LLC and Citydog! Club. This is a special exception, Mr. Chairman, to allow -- and this is what was advertised, to allow animal boarding under Section 735, a pet grooming establishment under Section 736, and an animal shelter under Section 739 and related variances under subsection 736.4, 739.5 in the C-2-B District, 2303 14th Street.

(Pause.)

BZA CHAIR JORDAN: Give me one second. I think I've lost a file. I don't know what happened to it.

(Pause.)

MR. MOY: And while there's a pause, Mr. Chairman, I believe the applicant has amended the relief.

BZA CHAIR JORDAN: Yes, I want to go through that, but just wait, because I want to catch up to where we are. I know there was a whole bunch of changes and I made all kind of notes on it and I just can't -- hm. I'm sorry, just give me a second here.

(Pause.)

All right, let's identify ourselves and wake me up. Gosh. How embarrassing. Identify yourselves please? Mr. Sullivan, why don't you start, since you're over there.

MR. SULLIVAN: Thank you, Mr. Chairman, and members of the Board. My name is Marty Sullivan of the law firm of Sullivan & Barros here on behalf of the party opponent. Thank you.

MS. BATTIES: Leila Batties with the law firm of Holland and Knight, here on behalf of View 14 Investments LLC.

MR. LICKO: Bill Licko. I'm a senior director with UDR, the owner of the subject building.

MR. KASDORF: Phillip Kasdorf. I'm one of the four partners of the proposed dog club.

MR. JOSHI: Darshit Joshi, I'm a senior acoustical consultant with Polysonics Corp.

BZA CHAIR JORDAN: What happened to the conversations between the parties? Did you have a conversation? I saw you guys walk out for about three minutes and come back.

MR. SULLIVAN: We did have a conversation and Ms. Batties mentioned the amended application, but my clients are opposed to the use, the special exception, animal boarding use more so than the variance-related stuff. They still have the same concerns because the use will still be just as impactful as it otherwise would have been.

BZA CHAIR JORDAN: All right, thank you.

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Ms. Batties, I understand that you have removed -- you only have before us the special exception as an animal boarding, is that correct?

MS. BATTIES: That is correct, Mr. Chairman.

BZA CHAIR JORDAN: And you're seeking relief under 735 of the special exception period for animal boarding. Is your belief that under animal boarding that allows you to do grooming, would that be the way to interpret what you said?

MS. BATTIES: I think pet grooming, by definition under the regulations, pet grooming is deemed to be an animal boarding use when there are more than ten dogs on the premises.

BZA CHAIR JORDAN: I think it's really kind of ambiguous the way that's written, Mr. Zoning Commission Chair, because it just says -- actually, it's under the definition of pet grooming.

MS. BATTIES: Yes.

BZA CHAIR JORDAN: And under pet grooming, it says this is pet grooming, but a pet grooming establishment where there's more than ten animals being located in waiting periods, really now to be considered animal boarding use.

MS. BATTIES: Well, it says on the premises or where there is overnight boarding permitted.

BZA CHAIR JORDAN: Yes.

MS. BATTIES: So it all falls under Section 735.

BZA CHAIR JORDAN: That is at your peril anyway, so we let it go. I mean it's at your peril. I think it's kind of ambiguous what that provision means.

ZC CHAIR HOOD: Mr. Chairman, this is the second time you've mentioned it's ambiguous. Thinking back, this is another thing that I had something to do with it. I'm starting to notice a lot of that here.

(Laughter.)

BZA CHAIR JORDAN: Because the issue here is that the applicant initially was looking for special exception and variance for pet grooming and then they withdrew it to amend their petition to just animal boarding. Because as I read your document, and also subsequently did my own looking at it, that if they get animal boarding, then they're allowed to do grooming, but that's not defined, the animal boarding. It's the only reference within pet grooming establishments, right?

MS. BATTIES: That's correct.

BZA CHAIR JORDAN: Mr. Sullivan, do you have a view on that? I mean you don't have to, you don't have to weigh in.

MR. SULLIVAN: As you said, it's their own peril. I know counsel's firm has filed several applications for pet grooming in addition to animal boarding use and I have as well. That's been the practice before the Board, but I guess it is up to the Zoning Administrator in the end.

BZA CHAIR JORDAN: But it doesn't say that you can groom. It can be interpreted to say you also need to get relief from animal boarding. It could be looked at that way, too.

MS. BATTIES: And that's why we're here, to get relief from the animal boarding --

BZA CHAIR JORDAN: It might mean that you also must get relief. If you said you are a pet groomer, I'm just trying to -- you don't have to listen to me. This is at your peril. It can say that if you came in for pet grooming, and however, you had more than ten dogs there at one time on the premises or they boarded overnight, then that's considered animal boarding. So it can be implied. That's the ambiguous part. It could mean that in addition to -- if you're going to do pet grooming, you're going to have more than ten dogs there at one time or overnight, then you also need to get animal boarding relief. But it doesn't necessarily mean that you have animal boarding that allows you to do the grooming. Does that make sense to you?

MS. BATTIES: Our position is that --

BZA CHAIR JORDAN: I understand your position.

MS. BATTIES: The definition of pet grooming --

BZA CHAIR JORDAN: For the record, I think that's something we have to drill in, but it's at your peril.

MS. BATTIES: It's in the definition of animal boarding and when you think about it, it's logical where you have overnight animals staying at the premises overnight or you have a large amount of animals in the facility, it really functions as an animal boarding use. Logically speaking, it makes sense.

BZA CHAIR JORDAN: Okay.

MS. BATTIES: The pet grooming establishment regulations really would apply to a facility that has pet grooming as a stand-alone operation. Not like the facility we're proposing here.

MR. SULLIVAN: Mr. Chairman, if I might respond, because that was an excellent point. We're speaking of logic. It's an odd situation that if you have 10 dogs in a pet grooming, you cannot be adjacent to a residential use and then if you get 11, that requirement goes away. So it doesn't make a lot of sense that as the number of dogs goes up, the requirement that it not by a residential use goes away.

MS. BATTIES: Well, the regulations --

BZA CHAIR JORDAN: Okay, it's your show to sell and we'll let you sell it. If we grant this relief, it's between you and the Zoning Administrator and then the neighborhood and everybody filing complaints necessarily. So we might be right back here. Anyway, okay, so we're clear about the relief you're seeking.

MS. BATTIES: Correct.

BZA CHAIR JORDAN: Do you want to do this on the 735 simply as animal boarding and everything else goes away? You're seeking special exception relief.

MS. BATTIES: That's correct.

BZA CHAIR JORDAN: Okay. Let's see what we do need to hear. Honestly, I understand everything that you argued, but my concern is two things. Under 735, because we understand what the facility is going to look like and all that kind of stuff. You don't have to put that evidence on. Your document is clear about that. But I think my concern and I don't know about the rest of the Board, it's just mine, they can chime in, is on the condition, the requirement under 735 that says it cannot abut a residential zone. And this below -- above this facility is going to be residential, more importantly, right -- the commercial zone and the residential zone line right up at that alley. The alley behind there starts the residential zone. Isn't that right? And if I'm wrong, put on evidence to let me know it's not correct. That's one thing I want to hear about.

Board, anything particularly you want to hear about?

MEMBER HINKLE: No, I just think the abut issue is really the prime issue here, Mr. Chairman.

BZA CHAIR JORDAN: And certainly, we want to hear how it impacts the neighborhood as Mr. Sullivan's clients are arguing about the noise and what have you. It's up to you to go ahead and put on your case, but I just want to say while you put on your case I want to hear that in particular.

MS. BATTIES: Okay, just can I take care of a couple of preliminary matters? I would like to submit into the record Steve Sher's report. He did an analysis, a typical zoning analysis for the Board. And I'm going to refer you to page 4 of his report. Mr. Sher could not be here today. But I know you accept him as an expert witness.

BZA CHAIR JORDAN: Yes, but he's not here. He's not able to be cross examined and the report wasn't here prior to 14 days and so I'm going to hold that in abeyance.

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MS. BATTIES: Okay, that's fine.

BZA CHAIR JORDAN: Whether or not we're going to accept it in the record because arguably, to be fair to -- that goes back to party status issues and I think that should be some earlier decisions on that. The party opponent would not have had the opportunity to rebut what's in this report and had they gotten it in the 14 days, they could have gotten an expert or somebody. I'm just trying to think this fair out of fairness. So let's just hold it in abeyance and not accept this in the record at this point.

Does that make sense, Board?

Okay.

MS. BATTIES: I will just go forward with addressing the issue you raised, Mr. Chairman, and that's whether or not the property abuts a residential district because that's the standard of review under the regulations.

And in this case, both the Office of Planning Report and our pleadings to the Board confirm that the property does not, in fact, abut a residential district. The property is located in the C-2-B zone. It's surrounded on all sides by property that is zoned commercial. The residential district that you refer to is on the other side of the alley, east of the alley.

BZA CHAIR JORDAN: It's an adjoining alley, isn't that right?

MS. BATTIES: I'm sorry?

BZA CHAIR JORDAN: The property alley --

MS. BATTIES: The alley separates the residential district.

BZA CHAIR JORDAN: Are you familiar to where zoning districts lie in regards to the regulations?

MS. BATTIES: Yes.

BZA CHAIR JORDAN: Then help me get through the Section 107.5.

MS. BATTIES: Well, let me just say this. The property is separated from the residential district to the east by the alley. So we --

BZA CHAIR JORDAN: Do you understand that the zoning districts include the alleys?

MS. BATTIES: Yes, but the zoning regulations for animal boarding do say the premises do not abut a residential district. And I'm saying in this case, the premises, the building itself does not abut a residential district. It is separated by the residential district by the alley. The building itself.

BZA CHAIR JORDAN: Okay. It's your case. I got you. It's your case. I'm just trying to get it out there on the table so that we can address it while we're here. Okay.

We're ready to listen. I'll shut up. Go ahead.

MS. BATTIES: Okay, I'm sorry.

For the record again, Leila Batties with the law firm of Holland and Knight on behalf of the applicant, View 14 LLC. The subject property is the View 14 building located at 2303 14th Street, N.W. It's located on the east side of 14th Street between Florida Avenue and Belmont Street in the Meridian Hill neighborhood.

And the first board closest to me actually shows the subject property. It was approved as a PUD in 2006. It contains approximately 32,000 square feet of ground floor and below-grade retail as well as an apartment house above with 185 units.

The retail space for the dog daycare center is approximately 4300 square feet with an entrance at the corner of 14th and Florida Avenue.

As expected, the DDOT report did not raise any objections to the proposed use. They concluded that the project would not have an adverse impact on the travel conditions and therefore there was no objection to the approval of the application by DDOT.

The Office of Planning, in its report, recommended approval of the special exception under Section 735. They provide an analysis based on the criteria for special exception approval including whether or not the use, the building, the use, the premises abuts a residential district and they concluded that the application meets the criteria under the regulations. With their recommendation, they did proffer or request two conditions: first, that the animals shall only enter and exit the business through the front door facing 14th Street; and second, that there shall be staff on site at all times where there are dogs on site including overnight. And we accept both of those conditions.

At the time they issued their report, the Office of Planning did not have any feedback from the community including the ANC-1B and the Meridian Neighborhood Association. So if I can just take some time to give you an update of where we are on those discussions.

First, as it relates to ANC-1B, we presented this application to ANC-1B at its regularly scheduled meeting on January 2nd. And at that meeting ANC basically took effectively no position on the application and that's why you don't have a letter from ANC-1B in the record. They are not going to be here to testify on this application at all. But I do want to point out that at the Design Review Committee meeting where we presented on December 16th, the Committee reviewed the application against the criteria set forth in the zoning regulations and voted unanimously to recommend approval of the application.

With regard to the Meridian Hill Neighborhood Association, we met with them twice, the first time on December 17th and the second time on January 21st and we have had communication with them since then, as recently as this morning regarding the application and they have expressed actually support for the use. They really are pleased that the retail space proposed for this building is slated for use other than a bar or a restaurant and they appreciate the fact that this use is much -- far less intense than another commercial use that can go into the space as a matter of right.

They did have two concerns and so the first being that they were concerned about people during drop off and pick up of the dogs, double parking along Florida and 14th, and they did not want dogs being walked on the residential streets and going into people's front yards. So in response to those concerns, the applicant has agreed to put its customers on notice to not double park. We believe a significant portion of our clients anyway would be walking their dogs to the facility. There's also ample parking along 14th Street in front of the property. But we've agreed to put our customers on notice and we've also agreed to walk the dogs only along 14th Street so that they would not be on residential walks in the surrounding area.

And I did receive an email from the new Board chair for the Meridian Hill Neighborhood Association this morning who said both of those conditions were acceptable to him.

BZA CHAIR JORDAN: That was different from the one that they submitted and said they were staying neutral?

MS. BATTIES: They were staying neutral. The Board is new and so they really didn't have time to vote on anything that we presented, but again, I have an email that was sent to me while we were waiting here this morning that said they were acceptable -- that those two conditions are acceptable.

ZC CHAIR HOOD: They said acceptable. They still didn't say support.

MS. BATTIES: They can't vote.

ZC CHAIR HOOD: Right, I saw that. But I'm just saying they just said they accept your condition. It seems like they said they were staying neutral. I saw that. But they didn't say they support. They just said they'll go along with the conditions.

MS. BATTIES: Correct. Do you want me to read the email?

ZC CHAIR HOOD: No. Seems to be a lot of emailing this morning. That's good.

(Laughter.)

BZA CHAIR JORDAN: Continue, please.

MS. BATTIES: So we covered the ANC. We went to Meridian Hill Neighborhood Association twice. We then, the applicant, along with the proposed dog daycare center operator held an event at the building in December in order to advise the residents of the proposed dog daycare center use. From that event, they were able to obtain 105 signatures from people that live in View 14 in support of the application. And that was submitted as part of our prehearing statement.

The petition included -- there are five residential units directly above the proposed dog daycare center use and the petition was signed by three of the tenants and three of the five apartment units directly above. One of those units was vacant at the time that they were seeking signatures in support and the fifth tenant, they weren't able to reach.

The only opposition that has been raised to this application or the only objection to the application was raised by City Dogs, Inc. and friends and supporters of City Dogs, Inc. They operate a dog daycare center less than a mile from where we're proposing our dog daycare center use. And they raised their objection at the full ANC meeting in January. And in doing so, they were very, very clear that their major concern at that time was that the name originally proposed for our site, Citydog! Club was too similar to the name of their operation, City Dogs, Inc. And that the similarity in the names would impact their business, adversely impact their business.

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After the ANC meeting where the ANC decided to take no action on this application, City Dogs, Inc. went out and launched an aggressive campaign against this application. They posted a Facebook page against the application. They have an online petition and to my knowledge it's still be circulated. But all that to say in response to the concerns raised by City Dogs, Inc. and as a gesture of good will and being a good member of the business community, our clients have agreed that they would not use the name Citydog! Club at this facility. And they did that knowing that really competition and the name of the business is not within the scope of your review of this application. But they will not operate as Citydog! Club and which is why that name has also been removed from the application.

So I'm going to close my remarks shortly, but I do want to outline our presentation to the Board. After I conclude my remarks, Bill Licko of UDR will speak. Then Phillip Kasdorf, who is again one of the operators and partners for the proposed dog daycare center, and then Darshit Joshi, our acoustics expert, will address the issue of noise generated from the proposed dog daycare center, particularly as it relates to the residential units above. And I want to say in his remarks, Mr. Joshi will offer three recommendations for the construction and improvements inside the dog daycare center that will fully mitigate any noise to the residential units above. And so those three recommendations -- Jessica, can you submit the proposed conditions?

We've provided or we're providing you now with the list of proposed recommendations or conditions to the approval of the application. They include the recommendations by Mr. Joshi. They include the Office of Planning conditions. And they include the conditions addressing the concerns of the Meridian Hill Neighborhood Association.

BZA CHAIR JORDAN: How much time do you think your presentation is going to take?

MS. BATTIES: Fifteen to 20 minutes. But Mr. Jordan, I actually need to back up. We need to proffer Mr. Joshi as an acoustics expert. I should have said that at the start of the hearing.

BZA CHAIR JORDAN: Do I have --

MS. BATTIES: His résumé was submitted as part of our prehearing statement.

BZA CHAIR JORDAN: Has he been previously designated by this Board?

MS. BATTIES: He has not.

BZA CHAIR JORDAN: And we have his résumé?

MS. BATTIES: Yes, it was submitted as part of the pre-hearing statement. Let me find the exhibit.

BZA CHAIR JORDAN: Exhibit I?

MS. BATTIES: Yes.

BZA CHAIR JORDAN: Thank you. Give us a second, please.

(Pause.)

Mr. Sullivan, any issues with that -- being designated as an expert?

MR. SULLIVAN: No, Mr. Chairman.

BZA CHAIR JORDAN: Okay, then we'll accept him, add him to the -- Board, no issues? So you think you're going to take 20 minutes. Then we have some cross examination. That's going to take another 10, 20 minutes and then -- we're going to stop here and start back at 1 o'clock.

MS. BATTIES: Mr. Jordan, before we take a break, I also want to let you know we have Mr. David Driver here who is going to be available to answer any questions. He's a mechanical engineer. And if there are questions raised with regard to the HVAC and mechanical equipment in the building, he's available to answer questions and we have his résumé to submit into the record as well.

BZA CHAIR JORDAN: What's his exhibit number?

MS. BATTIES: We just have his résumé here and he's available for questions.

BZA CHAIR JORDAN: Why don't you submit his résumé so we can --

MS. BATTIES: Okay.

BZA CHAIR JORDAN: And be sure that opposing counsel has a copy.

Let's do this. We're going to take a break to 1 o'clock. Is that sufficient time, Board? Okay. So we're in recess until 1 o'clock.

(Whereupon, at 12:20 p.m., the hearing was adjourned, and will reconvene at 1 p.m...)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:13 P.M.

BZA CHAIR JORDAN: Okay, let's find out where we are here. As we last left the last episode, we were just looking at Driver Engineering and David Driver's tender of qualification to be an expert. I didn't see a whole bunch of -- I don't know, I think it's really kind of borderline for me. And I know where the Board is.

MS. BATTIES: Mr. Chair, well, I'll let you finish.

BZA CHAIR JORDAN: You're not going to use him necessarily. We'll hold it in abeyance.

MS. BATTIES: Yes.

BZA CHAIR JORDAN: And you said you're going to use 20 minutes.

MS. BATTIES: Yes.

BZA CHAIR JORDAN: And you already used about ten. That's 30.

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MS. BATTIES: Right.

BZA CHAIR JORDAN: I'm serious.

I'm locking you in because I have to have the same time that we're going to give to the opposition and we're doing that.

Cliff, 20. Okay. I was remiss in not doing that initially asking how much time you needed.

So it's on you, keep moving.

MS. BATTIES: Before I turn it over to Bill, I want you to know I did take the opportunity to look up Section 107.7 of the zoning regulations over lunch. I also reviewed the zoning regulations which state that the animal boarding use shall not abut a residence zone. In this case, the animal boarding use would front on 14th Street and there is no part of the use or the premises that will be used for the animal boarding that will abut a residence --

BZA CHAIR JORDAN: Are you using the definition of abut meaning touching?

MS. BATTIES: Yes.

BZA CHAIR JORDAN: That's --

MS. BATTIES: I know you don't like to refer to other cases, but we did look up the definition of abut for the Wagtime case and --

BZA CHAIR JORDAN: There's many more than Wagtime. There's other cases in other jurisdictions. There's other things about the dictionary and you have various -- let's move on. You can argue that after the fact.

MS. BATTIES: Okay.

BZA CHAIR JORDAN: We can talk about it or you can submit on it. But anyway, yeah, Wagtime is just one of many. We probably had about 35 cases at least that dealt with the issue. Go ahead. So you know, I've looked at it. Go ahead.

MS. BATTIES: So I'm going to at this point turn the presentation to our team starting with Bill Licko of UDR.

MR. LICKO: Mr. Chairman, members of the Board, my name is Bill Licko. I'm senior director with UDR.

BZA CHAIR JORDAN: What's your testimony? As I said, we do not need to be repetitive of what's in here or the Board would ask questions if need be. We know what you have. If we have questions or issues, so you summarize, you can talk with everybody. We already know what you have in the record. But it would be germane to hit those particular points where we talk about noise, sound, and that, okay? So your testimony is about what?

MR. LICKO: The topics I'm going to cover is first some information on UDR, we're the owner and the landlord of the property.

BZA CHAIR JORDAN: What do you mean -- okay, you can skip that. Go to the next one.

MR. LICKO: My experience and philosophy as a representative in asset management, manager for UDR. And third, the dog daycare center operator.

MR. LICKO: Meaning what?

MS. BATTIES: Can I just say I think it's important in this case, Chairman Jordan, because they are the owner of both the retail space of the ground floor level and the residential units above.

BZA CHAIR JORDAN: Okay, it's your case.

MR. LICKO: I'll skip --

BZA CHAIR JORDAN: I'm stopping you in 20 minutes. Let's go back, it's not fair because I was talking. Just give them 20 because I'm stopping you at 20. So you use it like you want to use it. Okay? There you go. I want to be fair, so you can start over. Go ahead.

MR. LICKO: First and foremost, UDR is an owner, operator, and developer of multi-family apartment homes. Many of our communities are mixed-use buildings located in urban markets, similar to the subject property, View 14.

The company has 5800 apartment homes in the greater Metro D.C. market. Fifteen hundred of the 5800 homes are located in the District's boundaries including 255 apartment homes across the street from View 14 and Capitol View on 14th.

One of my responsibilities at UDR is to oversee the asset management and leasing efforts associated with UDR's entire retail portfolio. As one would expect, the portfolio is predominantly located at the mixed-use buildings where the ground floor retail space sits below luxury apartment homes in UDR's core urban markets.

It's important to note that the retail cash flows of a building are generally small, relative to the cash flow from the apartment homes above. Conversely, retail has a large impact on the building. It gives perspective residents and the guests the first impression of community.

We view vacant ground floor retail space as a form of blight which does nothing to activate the lower street level presence of the building and the surrounding community. Our retail tenants' primarily clients are the residents who lease apartments from us and as a result our retail philosophy is focused on complementing the apartment homes by procuring retail tenants that serve as an amenity to the residents above. We do not want a disruptive use at the ground floor resulting in unhappy residents above. This would put UDR's primary life blood cash flows in jeopardy.

UDR's interests are aligned with the Zoning Board and the overall community. No one is more sensitive to odor and sound mitigation than we are as owner and landlord of the building.

We are very confident in the operators that we have selected. We are certain they will comply with all the special exception standards in addition to the strict standards as set forth by us, the building owner.

In closing, once again, we will not jeopardize our primary cash flows, that being rents from our residents. We have been extremely thoughtful and diligent regarding this use. I am certain it will not only serve as a great benefit to our residents in the building, but it will provide a much greater need in the surrounding neighborhood community. Thank you for allowing me the time to speak today. I will yield the floor to Phillip Kasdorf, who represents the dog daycare center.

MR. KASDORF: I have a packet that I think each of you should have or will have.

BZA CHAIR JORDAN: Please make sure opposing counsel has whatever.

MR. KASDORF: Well, thank you for your time, Mr. Chairman, and Board members. I've got a packet that I would like to briefly go through. Again, my name is Phillip Kasdorf. I'm one of the four owners of the proposed dog club. And I'm prepared to give you an overview of our operation today and who we are as well.

We are the former executive officers of the Sports Club Company. We opened over 30 luxury health and fitness clubs and established the Sports Club/LA brand as a premiere operator. We actually brought the Sports Club/LA here to D.C. The Sports Club company was sold a couple of years back. Since then we like to say we've gone to the dogs.

There's a picture there on page two that shows one of our locations, located in downtown Seattle. That location is actually on the ground floor of a luxury residential apartment home that's owned and operated by UDR. The sidewalk along the front of that storefront has actually become a main attraction. People will come over there and watch on their breaks that work in the surrounding businesses and they'll also walk to and from work or home in front of that storefront to see the puppy in the window.

Page three, there's a picture of one of our modern play parks. We take a modern dog approach to dog daycare, dog boarding and dog grooming and we brand ourselves as the un-kennel.

Our cleaning program on page four is very important to us. Our promise is to deliver a sparkling, clean club. We are odor-free and we do understand that cleanliness can be an issue, so what I've also included in the packet are 13 pages of Yelp reviews that you can take a look at that will support how we run our operation.

How do we deliver an odor-free club? It's through our design, our equipment investment, our cleaning solutions and our accountability. We design easy-to-clean surfaces. We have epoxy floors, impermeable surfaces and stainless steel equipment throughout. All the seams are sealed. We have service stations in each one of our play parks. In that service station, we have everything that's needed to keep that play park sparkling clean.

Our equipment investment, it's not cheap to deliver our promise. We invest over \$25,000 in commercial cleaning equipment from commercial scrubbers, commercial window cleaning equipment, sanitizers, central vac systems and a commercial washer and dryer.

Our cleaning solutions, we get those from WAXIE and it's all part of their green product line.

Accountability. We clean the entire building ourselves. We do not use an outside service. We use daily checklists to accomplish this task. Also included in your packet is five pages of our checklist. We break that down per position and we start a new checklist every day which our general manager will inspect throughout the day. To top that off, we have mystery shoppers that come through our clubs on a monthly basis which will inspect our cleaning goals, service standards to make sure all of that expectation is being met. We've even had human members tell us that our clubs are even cleaner than their child's daycare.

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Waste management. We have nine waste receptacles throughout the club. We have poopy patches which you can see on page five. There's a picture of that to the left. Each one of our play parks has a poopy patch which is a designated spot for the dogs to do their business. That will go through the grass, down the drain, out of the building and keeps our clubs smelling fresh and sparkling clean.

BZA CHAIR JORDAN: The grass on page five?

MR. KASDORF: On page five, there's a photo to the left. That grass patch is what's called a poopy patch.

BZA CHAIR JORDAN: Okay.

MR. KASDORF: That's where a dog can do their business. When urine is deposited on the floor, that's extracted with our commercial scrubber, so we do not use any traditional mops or mop buckets anywhere in the building. All of that type of cleaning is done with a mini-scrubber that runs on battery. We'll bring that out of the service station. It will scrub, disinfect, and extract any moisture right off the floor.

In our exterior, keeping with our spirit of being sparkling clean, the exterior of our spaces are washed down daily.

Odor control. We are odor free. We do understand that that's hard to believe, but it is true. Through our cleaning program, our waste management eliminates all odors. We use HEPA filters which will be used and serviced on a quarterly basis and you can also see another picture of one of our modern play parks.

Noise mitigation. Going back to our health club experience, we have over 30 years of mitigating noise. We successfully mitigated noise from our fitness operation to the abutting Ritz-Carlton and Four Seasons hotels and residences with no complaints or problems. Every dog before they can come and play, they go through our complimentary meet and greet. This is a process for us to evaluate the dog to make sure the dog is the perfect fit for the club and for the pack. Any chronic barkers are dejoined or kicked out of the club. We restrict access to the play parks which keeps the dogs calm. When we need to communicate, we use walkie-talkies.

Through the middle of our space, we have what we call our feature path. There's one-way glass or one-way windows along that path so that our management and our team members and the dog owners can observe the dogs without disrupting the pack.

We play chill music which the dogs really enjoy, as well as the humans, 24/7 in our clubs. And then all of our handlers are trained on several methods to minimize barking. We engage the dogs, play games, things like that.

The benefits of our club. Our club is an attraction. It creates vitality on the sidewalk and it creates a destination for people going to and from work. Who can resist the puppy in the window?

Our club is the perfect amenity for the community that needs an upscale service provider like ourselves. Our marketing efforts are strategically designed to support the community. We donate three percent of our shop proceeds back to local dog charity partners. We support local rescues. We have Halloween parties, holiday parties, dog meet ups, etcetera.

Our members do not take up valuable parking spaces since our business is primarily drop off and pick up. Based on our experience at other locations, it takes approximately two minutes to drop a dog off and two minutes to pick a dog up and then as we've stated earlier, the majority of our customers or members will walk their dog either from home or from work to our location, drop them off before they go on for their day.

We have engaged a sound consultant and he is prepared to review his findings as it relates to noise mitigation.

MR. JOSHI: Good afternoon, Mr. Chairperson, Vice Chairperson, and the Board members. I am Darshit Joshi, senior acoustical consultant with Polysonics Corp. Polysonics prepared the sound transmission analysis submitted for the zoning application. The purpose of the analysis was to determine the sound impact of the proposed dog daycare center on the five apartment units located directly above the dog daycare center space and based on our findings, provide recommendations to attenuate or reduce the sound transmission from the dog daycare center so that the noise impacts on the apartment units would be mitigated. That is the overall background noise levels in the units would not increase beyond their current level as a result of the dog daycare center occupying the space below.

By way of background, according to the American Society of Heating, Refrigerating and Air Conditioning Engineers, also known as ASHRAE, the background interior sound levels for the apartment units on the second floor of the building shall be in the range of 35 to 40 decibels which is equivalent to a quiet bedroom at night.

In preparing our analysis, we measured the existing background sound levels in Units 221 and 226 between 10:30 and 11 a.m. These units were selected for the study because they are located directly above the proposed dog daycare center and expected to experience the worst impact from the dog noise. We found that the existing background sound level in the Unit 221 measured 35 decibels in the bedroom and 37 decibels in the living room. The existing background sound level in the Unit 226 measured 45 decibels in the bedroom and 41 decibels in the living room. Therefore, the noise levels for both units were approximately within the range recommended under the ASHRAE standards.

For purposes of projecting noise levels that would be generated from the dog daycare center, we assumed approximately 50 dogs of mixed breed and different sizes, all barking at the same time, and at the same level. Although a highly unlikely scenario, this assumption was used to present a conservative analysis of worst case noise levels. Based on this assumption, the worst case noise level for the dog daycare center is predicted to be 95 decibels within a room full of dogs. Transmitting through the existing construction elements of the building, namely the seven-inch thick post engineered concrete slab at the ceiling of the retail space, this would generate a noise level over 50 decibels in Unit 221 and Unit 226, which is not acceptable.

I would like to show you with your --

BZA CHAIR JORDAN: Let me go back a second. You said -- I thought you said that with the use of the way it's going to be, it's going to be 35 to 40 decibels.

MR. JOSHI: With the existing construction, it is not going to be 35 to 40. It will exceed 35 to 40. So we are proposing additional internal improvements.

BZA CHAIR JORDAN: I got you. Okay, thank you.

MR. JOSHI: Therefore, in order to mitigate the noise impact so that even in the worst case scenario, the background noise in the apartment units at the current levels, I recommended three things for the buildout of the space. First, the dog daycare center space should include an acoustical gypsum board ceiling isolated from the building structure on spring eye hangers with fiberglass insulation in the ceiling space. I'm going to show you.

BZA CHAIR JORDAN: You need to use the wireless mic, please.

MR. JOSHI: What we have recommended is this is the existing slab. This is seven inch thick slab which is full extension. What we have proposed in addition to this existing slab is the ceiling that is mounted on the spring isolators. The reason for doing that is that we would like to eliminate all of the vibration that is caused by the noise and transmitting to the floor above. So this is the floor where the apartment units are. The proposed retail space is going to be here.

I would like to show you something. We have divided this space into three parts, into three layers. If I can explain. This is mass, pure mass. It is concrete, solid concrete, seven-inch thick. Then we have the air space which is another important element for acoustics to provide isolation between two spaces. We have added the vibration isolators which are the heavy-duty isolators that we use for extreme cases. That means very loud cases.

We have used the insulation here which is about six-inch insulation for sound absorption, the sound that transmits through this and gets absorbed in this space. We have used two layers of high density gypsum board. I would like to mention that this is not a standard gypsum board. It is twice the density of the original gypsum boards. We have used two layers of those gypsum boards and then we have topped it off with an acoustical ceiling tile which has the 95 percent absorption rate. That means it absorbs 95 percent of the noise traveling from this direction to above.

I would like to show you the samples so that you can see them better. Here is the spring that we are recommending. As you can see, this is a heavy-duty spring and this is with the static deflection. It will be approximately 12 to 16 square feet, so it will go every four feet by four feet and will hold the high density gypsum board.

These are the gypsum boards that we're going to put here so it will essentially look like this and it is connected with vibration isolation hangers. There will be two layers of this.

BZA CHAIR JORDAN: Each one of those is a layer?

MR. JOSHI: Yes. Below this, I don't have the insulation to show, but it will be a loose fill insulation which will be about six-inch thick and then we have at the bottom, we'll have one layer of ACT going this way and it will be in the grid just like this and it will absorb 95 percent. It is sound rated to absorb 95 percent of the sound that is incident on the surface of these panels.

In addition to that, we have also recommended that the walls, the wall partitions within the space will have two-inch thick wall panels that are especially rated for sound absorption. It is also -- has the impact rating so that it doesn't get damaged by the dogs. This will absorb about 90 percent of sound that is incident on the surface of the wall. So we don't have any deflections. We are controlling the deflections within the space and at the same time we are also providing the isolation that is needed between two floors.

MEMBER HINKLE: Excuse me, would the vibrations go up through the columns as well and are those protected?

MR. JOSHI: Yes, they do and what have done is we have provided the double stud walls to prevent the noise that is transmitting through the perimeter walls and also through other transfer points.

MEMBER HINKLE: Okay.

MR. JOSHI: I have details. I can show you. As time is running out, I can show you more details after I'm done with this.

Using this recommended construction approach, even under the worst case noise level in the dog daycare center, the noise levels in the apartments units above the dog daycare center will be in the range of 35 to 40 decibels which is the existing interior background sound level measured in residential units 221 and 226 and also the recommended ASHRAE standard.

BZA CHAIR JORDAN: Are those units with furniture or just vacant?

MR. JOSHI: With furniture.

Before concluding, I note that the focus of our analysis was the noise impact on the residential units above. That's because as Bill Licko indicated in his remarks, this is a serious business consideration for UDR. The zoning regulations for animal board refer to noise that is objectionable to nearby properties. Based on my professional experience, it is my opinion that the noise generated from the dog daycare center proposed under this application would not generate noise that is objectionable to nearby properties because there will be no open windows or doors during the operation of the business.

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Also, 14th Street is a major commercial thoroughfare with background noise ranging from traffic to construction. There is also a school diagonally across Florida Avenue. Finally, with the exception of the Comcast building, there are no neighboring properties, at least none close enough in proximity to experience objectional noise from the dog daycare center. That concludes my remarks. I'm happy to answer any questions related to noise from the Board.

I will now turn it over to Ms. Batties for further proceedings.

BZA CHAIR JORDAN: Hold up. You asked for questions from the Board and then turned it over to Ms. Batties.

From the Board, any questions of this witness or any witness offered by the applicant?

MS. BATTIES: That concludes our direct presentation.

BZA CHAIR JORDAN: Very good. Mr. Sullivan, cross, please, of any of the witnesses?

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MR. SULLIVAN: Thank you, Mr. Chairman. To the acoustic engineer, will the subject premises be sound proof?

MR. JOSHI: Yes.

MR. SULLIVAN: So no dog barking noise will be heard anywhere outside of the space?

MR. JOSHI: Yes.

BZA CHAIR JORDAN: Wait, there's no dog -- I didn't hear you say that. You're saying there's no dog noise will be heard. What's in the 30 to 40 decibel, what noise is that?

MR. JOSHI: That is not outside. That is upstairs.

BZA CHAIR JORDAN: Okay, so you said outside. Is that different?

MR. SULLIVAN: Well, I said upstairs. If I didn't, I meant to be. I said outside the subject premises which would be upstairs as well on the second floor. So it won't be sound proof on the second floor, there will be dog noise heard on the second floor, is that correct?

MR. JOSHI: It will be sound proof?

MR. SULLIVAN: It will be sound proof?

MR. JOSHI: Yes.

BZA CHAIR JORDAN: Let me make sure. I think it's important. Thirty or 40 decibels, you're considering that sound proof?

MR. JOSHI: That is the background noise level that is the ambient noise level that you in --

BZA CHAIR JORDAN: That I would hear in Unit 221 and 226?

MR. JOSHI: correct.

BZA CHAIR JORDAN: And that decibel level and Mr. Sullivan, I'm trying to stay with your question, you're saying that's sound proof? You're saying that's considered sound proof?

MR. JOSHI: The sound proof --

MS. BATTIES: I think what has been missed in this communication is that the existing noise levels in those units already is 35 to 40.

BZA CHAIR JORDAN: And I thought he said they're 50 already?

MS. BATTIES: No, no. They're not 50.

BZA CHAIR JORDAN: I'll tell you what, Ms. Batties, let me have him answer.

MS. BATTIES: Okay.

BZA CHAIR JORDAN: Without sound proofing, what's the level?

MR. JOSHI: The existing level is 35 to 40 decibels.

BZA CHAIR JORDAN: Okay.

MR. JOSHI: I say that it will exceed 50 decibels if we don't add the ceiling to the existing concrete slab.

BZA CHAIR JORDAN: Got it. So with the added ceiling, what's the decibel level in the unit? With the added sound proofing, what's the decibel level in those units?

MR. JOSHI: We will achieve the existing noise levels which is 35 to 40 decibels.

BZA CHAIR JORDAN: All right.  
I'm clear. I'm clear. So there's going to be noise at 30 or 40. You're saying the noise in there is not going to be contributed from downstairs. It's coming from wherever?

MR. JOSHI: Yes.

BZA CHAIR JORDAN: But it could come from downstairs?

MR. JOSHI: It will be an ambient noise.

ZC CHAIR HOOD: Mr. Chairman, if I could just ask, what was the rating again, the rating of the padding?

MR. JOSHI: The sound transmission --

ZC CHAIR HOOD: The padding that goes in. You said there was a rating?

MR. JOSHI: The gypsum?

ZC CHAIR HOOD: Yes, whatever the board is. You said there was a rating.

MR. JOSHI: It's a high density gypsum board.

BZA CHAIR JORDAN: But you gave us a rating.

ZC CHAIR HOOD: You have us a rating. What was the rating again?

MR. JOSHI: The density of that gypsum board is twice than the regular gypsum board. It doesn't have a rating.

ZC CHAIR HOOD: All boards have a rating, right, like E-86?

MR. JOSHI: It doesn't have the sound rating. It has the density.

BZA CHAIR JORDAN: What about the other thing that you had that was a wall panel? You gave a rating.

ZC CHAIR HOOD: The wall panel has a rating? Okay, maybe that's what I'm looking for.

MR. JOSHI: This is called acoustical ceiling tile that will go in a grid which will look like this.

ZC CHAIR HOOD: All I want is the rating.

MR. JOSHI: They both have ratings. It is called NRC.90. And what it means is .90 is 90 percent absorptive panels.

ZC CHAIR HOOD: Which one absorbs more? The one I'm familiar with is like an E-84. Does your absorb more than an E-84? Or it's not relevant.

MR. JOSHI: I'm not sure what is E-84.

ZC CHAIR HOOD: Anyway, what is the rating again?

MR. JOSHI: The rating is called noise reduction coefficient. The acronym is NRC.

ZC CHAIR HOOD: NRC.

MR. JOSHI: NRC. And it is .95. So we are recommending .95 NRC that absorbs 95 percent.

ZC CHAIR HOOD: Thank you.

BZA CHAIR JORDAN: Ninety-five or 90?

MR. JOSHI: Ninety-five.

BZA CHAIR JORDAN: I'm sorry, Mr. Sullivan, but you opened it and I wanted to try to hone in on what he was saying. Okay.

MR. SULLIVAN: So even with all that structural work, the noise from downstairs will reach upstairs? It won't be sound proof, right? There will be noise. You may not hear it if the ambient noise levels happen to be above the noise that you would hear from below. Is that correct?

MR. JOSHI: You will hear the ambient noise which will be mix of traffic, construction, anything, unless you try to hear them. If you plug up your refrigerator and you plug your heat pumps off, and if you try to hear and put your ear on the floor.

MR. SULLIVAN: And you measured that ambient noise from 10:30 a.m. to 11:30 a.m.?

MR. JOSHI: Correct.

MR. SULLIVAN: But no other times and you think that's a fair sample of ambient noise say at 2 o'clock in the morning or 10 o'clock in the evening?

MR. JOSHI: Florida Avenue and 14th Street is a busy corridor. So we measured outside and we measured that is 68 to 70 decibels during the daytime, so the ambient level is not going to change because of the traffic outside on the street.

MR. SULLIVAN: So ambient noise is somewhat related to the traffic, but it won't change if the traffic is not as --

MR. JOSHI: The ambient noise --

BZA CHAIR JORDAN: Are you saying it's constant?

MR. SULLIVAN: Is it constant?

MR. JOSHI: It varies between 35 to 40 decibels.

BZA CHAIR JORDAN: Okay, all right. But let me go back one second. The noise that I'm hearing -- I'm in Unit 221 or 226 and the noise that I hear is going to be certainly some outside noise, but I will not hear anything coming from the dog boarding?

MR. JOSHI: No.

BZA CHAIR JORDAN: Okay.

MR. SULLIVAN: So they'll never hear a bark. So if the Zoning Administrator investigates and goes into one of these units and hears a dog barking, he can shut down the use because you're committing to never ever hearing a dog bark, is that correct?

MS. BATTIES: I'm going to object to that question. He can't --

BZA CHAIR JORDAN: Sustained. That's not what he said and I think that's not what they asked and that would not be what the order would say. So I sustained it. Why don't you ask your next question.

MR. SULLIVAN: But ambient noise levels change, right?

MR. JOSHI: They change and they change -- we found that they change within that range, 35 to 40 decibels.

MR. SULLIVAN: And you said that the projected noise generated from dogs barking is based on the average noise level?

MR. JOSHI: Correct.

MR. SULLIVAN: Meaning maybe approximately half that time it's higher than the average.

MR. JOSHI: No.

MR. SULLIVAN: So it never goes higher than the average? Is it a maximum or is it an average?

MR. JOSHI: That's the maximum.

MR. SULLIVAN: Okay, your report says the projected noise generated from dogs barking is based on the average noise level.

MR. JOSHI: What we said is that you know the average noise level was calculated for single bark and then based on that average noise level, the average noise level was used for the mixed breed dogs of different types. So we have not collected the dogs that are extremely loud, all the loud dogs or extremely quiet dogs. We have taken the average of mixed breed dogs of different sizes.

BZA CHAIR JORDAN: If I could, with that noise, one dog or is it a group of ten dogs factored in?

MR. JOSHI: One dog will have 78 decibels.

BZA CHAIR JORDAN: What about five or ten?

MR. JOSHI: We have to average that and I have to calculate that, but I have done 1 and then 50.

BZA CHAIR JORDAN: Okay, but how many dogs are you supposed to have in this spot at one time?

MS. BATTIES: Approximately 50 dogs are estimated to be there during the day.

BZA CHAIR JORDAN: You don't find that relevant that we would need to know what the worst case scenario of 50 dogs barking at one time would be?

MS. BATTIES: That's his study.

BZA CHAIR JORDAN: He said one. One to 50, I'm sorry. I apologize. What's the 50?

MR. JOSHI: Ninety-five decibels.

BZA CHAIR JORDAN: It's still going to be 35 to --

MR. JOSHI: It's 95 decibels.

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BZA CHAIR JORDAN: Okay. Without the sound proofing.

MR. JOSHI: Ninety-five decibel sound generated in the retail space.

BZA CHAIR JORDAN: And what does that give you upstairs in Room 221 and 226?

MR. JOSHI: After adding proposed additions, you will get 35 to 40 decibels which is the current existing decibels in those units.

BZA CHAIR JORDAN: But it's not derived from the dog kennel, the dog --

MS. BATTIES: Daycare.

BZA CHAIR JORDAN: Daycare.

MR. JOSHI: Dog daycare.

BZA CHAIR JORDAN: It's not -- that sound is not coming from there.

MR. JOSHI: It is coming from there.

BZA CHAIR JORDAN: Excuse my ignorance, but it's not additive from the outside noise and the noise coming downstairs is not additive?

MR. JOSHI: We have -- the noise that will be coming from other things like machinery or anything else, will be much lower than the dog noise. Those noises will be in the range of -- if I may assume, it will be about 65 to 75 decibels. We are 20 decibels over that limit.

BZA CHAIR JORDAN: So the dogs --

MR. JOSHI: Will mask the other noises.

BZA CHAIR JORDAN: So I will hear the dogs. I won't hear my refrigerator, but I'll hear the dogs at 35 to 40 decibel max?

MR. JOSHI: You will not hear them once we do the proposed recommendations.

BZA CHAIR JORDAN: Why don't you continue.

MR. SULLIVAN: So after the proposed alterations, you said that the dog noise will be 35 to 40 decibels above. And you said the ambient noise will max out -- not max out, but it will be a minimum of 35, so between 35 and 40 you could hear dogs?

MR. JOSHI: Between 35 and 40, yes. But it will not exceed the average sound level that you have currently in the existing apartment units.

MR. SULLIVAN: The average.

MR. JOSHI: Yes.

MR. SULLIVAN: Okay. You said that 50 dogs barking is the worst case scenario. Would 60 dogs barking be worst than that?

MR. JOSHI: Yes.

MR. SULLIVAN: Do you know if the applicant has committed to not have more than 50 dogs in the establishment at one time?

MS. BATTIES: The applicant has not committed to that.

MR. SULLIVAN: Okay, so the worst case scenario could be more than 50 dogs barking, is that correct?

MS. BATTIES: The applicant is committed to mitigating the noise levels for the building, however many dogs there are in the property, on the premises. We use this, 50 dogs, as an estimate to show what needs to be done to mitigate the noise impacts completely.

MR. SULLIVAN: Okay, I am just asking why he calls it the worst case scenario though if it's not. Not in any way to be the worst case scenario if there's going to be more than 50 dogs.

BZA CHAIR JORDAN: Why don't we continue with the cross examination and we're not going to make argument from either counsel at this point. He's asking questions. The responses are the responses. Please.

MR. SULLIVAN: So there could be a worst case scenario -- 60 dogs would be worst?

MR. JOSHI: I would say that the study was done for 50 dogs.

MR. SULLIVAN: Okay. Are you an expert in dog behavior?

MR. JOSHI: No.

MR. SULLIVAN: When you said in your report that 50 dogs barking at once was a highly unlikely scenario, so on what did you base that conclusion?

MR. JOSHI: My operation control, management control.

MR. SULLIVAN: I'm sorry, I don't think I understand that answer.

MR. KASDORF: Well, we average 50 dogs at our mature locations and that's what we would see happening here. We do not have a scenario or have not had a scenario where all 50 dogs are barking at one time. And as I mentioned earlier, we do things to mitigate that with dog engagement. Our team members are trained to stop the dogs from barking and then excessive barkers are dejoined or kicked out of the club.

BZA CHAIR JORDAN: I thought we said that we did a measurement -- we did a measurement extrapolating 1 dog and then 50 dogs. Right?

MR. JOSHI: Yes.

BZA CHAIR JORDAN: And I heard you say that we didn't do it that way.

MR. KASDORF: I was referring to our real world scenario we do not have 50 dogs in our operation now that bark at one time.

BZA CHAIR JORDAN: Got you.  
Okay.

MR. SULLIVAN: But you don't know how many dogs maximum you'll have in this location?

MR. KASDORF: We just can assume based on our mature clubs that we have that would see an average of 50 dogs.

MR. SULLIVAN: But you wouldn't commit to 50 dogs.

MS. BATTIES: No.

BZA CHAIR JORDAN: The Board can impose whatever conditions it feels necessary if it goes forward with this. Go ahead.

MR. SULLIVAN: For the acoustic engineer, do you know if dogs in the residences above hear the -- well, first of all, do you know if dogs would be more likely to hear the barking than humans on the second floor?

MR. JOSHI: Yes.

MR. SULLIVAN: And I know you're not an expert in dog behavior, but if a dog hears barking from below, do you think they might be more likely to begin barking as well? Did your study consider that is my question. You said in your report, I think it's your ultimate conclusion or close to it that at the bottom of page three, the noise level for the adjacent spaces shown in Table 1 is rarely expected to be exceeded. So I would take by that in some cases it will be exceeded. Is that correct?

MR. JOSHI: I would say it's 95 decibels and beyond that it's operation control.

MR. SULLIVAN: But if the noise level is rarely expected to be exceeded, that means it's not 100 percent expected to be exceeded, rarely expected to be exceeded means it will be exceeded at times.

MR. JOSHI: And I understand that when that happens, the management will take over and would not let it happen.

MR. SULLIVAN: I understand. Thank you.

BZA CHAIR JORDAN: What was the percentage of times that it might be exceeded?

MR. JOSHI: Sorry?

BZA CHAIR JORDAN: What is the percentage that it might be exceeded?

MR. JOSHI: Zero.

BZA CHAIR JORDAN: Zero?

MR. JOSHI: Yes.

BZA CHAIR JORDAN: What question did you ask? I thought --

MR. SULLIVAN: The report says "rarely to be exceeded."

BZA CHAIR JORDAN: Yes, so "rarely" is not zero. What does that mean? That's what I'm asking.

MR. JOSHI: I'll defer to Phil on that to answer the question.

MR. KASDORF: Again, as I mentioned, we do not in our three locations that we have open now, we do not have situations where 50 dogs bark at one time. We use the different play parks. We have five different play parks. We separate the dogs there by size and by temperament and we have a handler in each one of these play parks. So if a dog starts to bark, that dog is engaged. Not all 50 dogs in the building would bark at one time.

BZA CHAIR JORDAN: Let me ask you, what did you mean in your report when you used the word "rarely"?

MR. JOSHI: The report is done with 50 dogs and 50 dogs would create 95 decibels. If the dogs are increased, then it may increase. But if there are 50 dogs or less than 50 dogs, it will not increase 95 decibels. So based on this analysis, it will be 95 decibels or less.

MS. BATTIES: Mr. Chairman, if I may weigh in because Mr. Sullivan --

BZA CHAIR JORDAN: We won't have an argument, please. Mr. Sullivan is asking cross examination. You may make objections, but we're not going to clarify the testimony.

MS. BATTIES: No, I don't want to clarify the testimony. I do want to clarify the zoning regulations when his report speaks to adjacent properties --

BZA CHAIR JORDAN: You're making argument. You can save that. He's doing cross examination.

MS. BATTIES: I just want to clarify that the zoning regulations, the standard under the zoning regulations is whether or not the noise generated is objectionable to adjacent or neighboring properties.

BZA CHAIR JORDAN: You're telling me what you're saying now is not making argument?

MS. BATTIES: I'm sorry?

BZA CHAIR JORDAN: You're telling me what you're saying to me now is not argument? He has a right to cross examine and then you can come back and you can make your notes and you can come back and talk about it. We're trying to -- we're not having, as I said to both counsel, we're not making argument at this time. We're doing the testimony.

Please, Mr. Sullivan.

MR. SULLIVAN: Thank you, Mr. Chairman. So one dog barking is 75 decibels and 50 dogs barking is 95 decibels, is that correct?

MR. JOSHI: One dog is 78 and 50 dogs is 95 decibels, yes.

MR. SULLIVAN: And did you record that sound?

MR. JOSHI: Yes.

MR. SULLIVAN: You got 50 dogs to bark somewhere and recorded that sound?

MR. JOSHI: No.

MR. SULLIVAN: So you didn't.

MR. JOSHI: I'm going to explain what we did.

MR. SULLIVAN: Actually, my question is just whether or not you did a recording. When you did your tests, sound tests on the second floor, you didn't have noise on the first floor, so you couldn't record what the noise was coming through, is that correct?

MR. JOSHI: Yes. But it would not apply because we don't have the proposed improvements in the space yet.

BZA CHAIR JORDAN: Is that it, Mr. Sullivan?

MR. SULLIVAN: That's all I have, Mr. Chairman. Thank you.

BZA CHAIR JORDAN: Any redirect, please? Board any questions?

Redirect, please?

MS. BATTIES: I don't have anything at this time.

BZA CHAIR JORDAN: Any other questions, Board?

ZC CHAIR HOOD: Mr. Chairman, I'm probably a little late, you probably asked for this earlier, but I'm trying to catch up. In the handout that you submitted, you mentioned that when the -- you mentioned about the grassy area in the photograph, it looks like a black table or whatever that's sitting on the ground.

MR. KASDORF: The grass?

ZC CHAIR HOOD: You call it the grass?

MR. KASDORF: Yes. It's the poopy patch.

ZC CHAIR HOOD: Okay. That's the name of it, the poopy patch. I'm not too familiar with poopy patches. But anyway, let me ask this, how do you get the dogs to come from off the main floor and go to the poopy patch? If I'm somewhere else -- I don't know, how does that work? You said that's what keeps the smell down and everything and I live upstairs and that will take care of all of that and keep it clean. How does that work?

MR. KASDORF: The poopy patch, each one of our play parks has the designated poopy patch. It's a stainless steel container that's actually positioned over a drain with a grid on top of the stainless steel. And on top of that is a special grass that's made that dogs can do their business on. it will actually go through the grass, down the drain, out of the building, which helps us keep the place smelling fresh and sparkling clean.

Now the dogs -- the fire hydrant you see in this picture, all it takes is a couple of dogs to do their business there and that scent is there and the rest of the pack will follow. So we've seen 90 to 95 percent of the dogs will use that poopy patch. Then that drain is washed out throughout the day. So we'll clean, disinfect that actual patch throughout the day and then when a dog doesn't use the poopy patch, we bring out the commercial scrubber which runs on battery. That will scrub, disinfect and extract any moisture right off the floor.

And then the floor that we use, it's an advanced form of epoxy called polyurea. It does not hold any bacteria. Does not hold any odor. It's great for animals. Great for humans alike, really easy for us to keep clean. And it's sealed where liquids cannot get through the floor. And as you can see, it's coved up about six inches on the wall so nothing can get between the wall and the floor.

ZC CHAIR HOOD: So is it your testimony that 100 percent, the poopy patch will be used and the poopy patch will always be used. Is that your testimony?

MR. KASDORF: Ninety to 95 percent of the dogs in the play park use the poopy patch.

ZC CHAIR HOOD: Okay, so there's that five percent that won't and the person upstairs may smell something?

MR. KASDORF: The five percent --

ZC CHAIR HOOD: I'm not trying to put words in your mouth. I'm just trying -- walk me through this.

MR. KASDORF: The five percent of the dogs that don't use the poopy patch, there still will not be any smell based on what I described with the type of flooring we use and then how we clean, immediately clean that urine off the floor.

ZC CHAIR HOOD: So the poopy patch is just like a 90 to 95 percent guarantee?

MR. KASDORF: Ninety to 95 percent guarantee that the dog will use that.

ZC CHAIR HOOD: I may have some more questions later, Mr. Chairman. Thank you. I'm still learning as this evolves.

BZA CHAIR JORDAN: So let's go to the Office of Planning, if there's anything you need to add to your report that we already have that we already read, that we already understand..

MR. GYOR: Good afternoon, Mr. Chairman, and members of the Board. Stephen Gyor with the Office of Planning. The Office of Planning supports the applicant's amended request for special exception relief for animal boarding. We included two conditions agreed to by the applicant in our report which you have before you and just to add in regard to abutting the residential zone across the alley, according to discussions with colleagues in the Office of Planning as well as a recent Zoning Administrator interpretation, I think that the alley itself is unzoned and therefore the use here would confront the residential properties across the alley -- would not actually abut.

BZA CHAIR JORDAN: The alley is not zoned?

MR. GYOR: Correct.

MEMBER HINKLE: Then how come the map shows the zoning districts coming together? And if the alley were abandoned, then that zone would be --

MR. GYOR: From what I understand the alley itself, the 15-foot piece is unzoned, so this use would confront the R-5-B zone across the alley. And that's according to a Zoning Administrator interpretation.

BZA CHAIR JORDAN: Well, he would be wrong. Is that the latest Zoning Administrator or another interpretation?

MR. GYOR: It was a recent case about a month ago, I would say.

BZA CHAIR JORDAN: A month ago here, here?

MR. GYOR: Yes. I believe it was  
--

BZA CHAIR JORDAN: Here?

MR. GYOR: Yes.

BZA CHAIR JORDAN: I don't think so. But you can pull it down if you want, but I don't think so. We would have been here a month ago and -- okay.

ZC CHAIR HOOD: It must have been a BZA case. Had to have been.

MR. GYOR: It was. It was a BZA case.

BZA CHAIR JORDAN: Anyway, proceed. Is that it?

MR. GYOR: Yes, I have nothing else.

BZA CHAIR JORDAN: Thank you. Board, any other questions of OP? The applicant, questions of OP, please?

MS. BATTIES: No, we don't -- well, actually, the regulations state that the use does not abut a residential district. In this case again, the use fronts on 14th Street. Does not abut -- is it the Office of Planning's interpretation based on the analysis you've provided that the use does not abut the residential district to the east?

MR. GYOR: That is correct.

MS. BATTIES: Thank you. BZA CHAIR JORDAN: Any other questions? Mr. Sullivan?

MR. SULLIVAN: No questions, Mr. Chairman. Thanks.

BZA CHAIR JORDAN: Then let's move to DDOT. Anyone here from the Department of Transportation? We do have a letter of no objection from the Department of Transportation. Is there anyone here from ANC-1B? We don't have a letter on file from ANC-1B, right? Anyone here wishing to testify in support of this application?

All right, let's turn now to the opposition's case. Twenty minutes on the clock, please?

MR. SULLIVAN: Thank you, Mr. Chairman. I represent primarily, although there were more people from the neighborhood, I won't focus on them, four residents of the second floor of the View 14 building, none of whom could make it here today because of work commitments. I have letters from three of them and I'd like to pass those out at this time.

(Pause.)

BZA CHAIR JORDAN: And these letters are what, their statement or something?

MR. SULLIVAN: Yes, they are letters of opposition and I will let them speak for themselves. I'm not going to report.

BZA CHAIR JORDAN: We can absorb them and read them.

MR. SULLIVAN: So these four people have asked me to represent their interest in front of the Board. Like I said, I'll rely on those letters --

BZA CHAIR JORDAN: Let me ask you something. So if these letters are going to provide your testimony, so there's nobody else you're going to call as a witness?

MR. SULLIVAN: No.

BZA CHAIR JORDAN: So then what we consider, why don't we -- we need to be fair here then. Any other evidence you want to present, so then we can come back to you to do a closing then or an argument?

MR. SULLIVAN: No, I don't have any other evidence, just a very short argument.

BZA CHAIR JORDAN: Okay. So let's do that then. Let's go back to the applicant for any redirect?

MS. BATTIES: Well --

BZA CHAIR JORDAN: Excuse me one second, please. Ten minutes on the redirect, please. Thank you.

MS. BATTIES: I guess --

BZA CHAIR JORDAN: Excuse me, I'm remiss. Anyone who wants to testify in opposition, yes, come forward. Thank you. And then we'll come for our redirect.

Your name, please? Three minutes on the clock, please.

MS. PARASCANDOLA: I'm Christina Parascandola and I'm the immediate past president of the Meridian Hill Neighborhood Association. Our current president was here earlier today, but he had to go back for work.

We have two concerns about the application. First of all, this is an indoor facility, an indoor animal shelter for 50 dogs as the applicant has represented to our association. The operations are entirely indoors. They are dogs and dogs need to go outside and run around and go to the bathroom. The our door area they propose to use are the streets and sidewalks of our neighborhood. And although 14th Street is commercial, the cross streets, I'm talking about Chapin Street, W Street, Florida Avenue nearby are residential. They're rowhouses. Many of us spend a lot of time and put a lot care into our tree boxes and the gardens in front of our homes. We spend a lot of money on them. If a dog urinates on them, it is very difficult for plant life to grow. It can kill the plants. Once a dog has peed in one area, other dogs will follow.

On a hot summer day in a spot like that, the stench is really awful and right now there's no other plan that we've heard of from the applicant to control this sort of thing. And I think they really downplayed how close they are to several residential streets where they plan to be walking the dogs.

So we feel that they're kind of foisting the problem on to the residents to take care of it.

The second issue is with double parking and traffic. We would like to see the applicant have a traffic plan to control for double parking. Right now, the language that we just saw this morning for the first time that they "shall advise customers to refrain from double parking" we don't think that has enough teeth in it. 14th Street is very busy. It intersects Florida Avenue right by the applicant's establishment. And we think there's a potential here for a lot of bottleneck traffic during rush hour.

Finally, I just wanted to conclude by just bringing up a procedural point. It is true that the applicant came to two of our meetings. On December 17th, Ms. Batties contacted me that day, the day of our meeting. I advised her that she's welcome to come, but we would invite them to speak at our January meeting simply because we did not have the opportunity to provide any notice to our members that this would be on the agenda. Ms. Batties, nevertheless, came to our meeting. We allowed her to speak and I made it very clear to her that her remarks would be for informational purposes only and we would not be taking a vote.

At this meeting, and at our January meeting, we made it clear that we had these two concerns about the dogs being walked on the streets and about parking. So I don't think it was a very fair characterization of Meridian Hill Neighborhood Association's positions that we had no objection. Thank you.

BZA CHAIR JORDAN: Thank you.  
Board, any questions of this witness.

The applicant have any questions  
of this witness?

MS. BATTIES: I don't disagree  
with the fact that --

BZA CHAIR JORDAN: Are you asking  
her a question?

MS. BATTIES: No, I'm not going  
to ask her a question. I'll respond on  
direct.

BZA CHAIR JORDAN: Mr. Sullivan?  
MR. SULLIVAN: No questions.  
BZA CHAIR JORDAN: Mr. Hood.  
ZC CHAIR HOOD: Do you know  
anything about the email? This was a  
question about the support of the two  
conditions. Do you know anything about the  
email that was sent to her today or while  
she was sitting here?

MS. PARASCANDOLA: I'm aware that Ms. Batties sent our current president an email this morning. I believe saying something about the two concerns that we had. I'm concerned that we didn't have a chance to review this, to go over the details, maybe to sit down and discuss it. And I felt awkward even checking the box that said opponent because we would like to work with them and have this happen, but we would like them to address these concerns first. And I feel that to get something the morning of the hearing before this Board just doesn't give us enough time, considering that they applied, they submitted their application in November.

ZC CHAIR HOOD: I agree with you. No argument with me. Thank you, Mr. Chairman.

BZA CHAIR JORDAN: So now we go to redirect and what did I say, ten minutes on redirect? Okay, let's hit ten on the redirect.

MS. BATTIES: I want to start by addressing the concerns raised by the Meridian Hill Neighborhood Association. We were asked to meet with them at the ANC meeting. The ANC Design Review Committee on December 16th, we were asked by them to make a presentation the next day.

BZA CHAIR JORDAN: Let me stop you. This is one of the areas where we have a lot of problem with the Board when we have attorneys giving testimony. That subjects the attorney to cross examination. So I just want to let you know and put that in front of you and then that opens the door probably to some confidences and some other stuff.

MS. BATTIES: I understand. We were asked on the 16th to present on the 17th, knowing that they could not take a vote on the application. That's correct. We came back the next month. They raised the concerns that were expressed and asked us to agree to not walk the dogs at all which we said we could not -- actually, what they said is they would issue a letter of support if we agreed to certain conditions. One of those conditions being that we would not walk the dogs. I said we will not agree to that condition for their letter of support. And so that is why we proposed on our own the two conditions that we did to address their concerns, one being that the dogs will only be walked along 14th Street and second that we will advise our customers not to double park. DDOT has weighed on this application. I have been at the site at rush hour time. There is ample parking in front of the property during those times. And there has not been any indication from a traffic engineer or otherwise that parking is going to be a problem at this site for

this use.

Again, our client has testified that they expect a significant percentage of their customers to walk their dogs to the site. So we got a letter from the Meridian Hill Neighborhood Association late last night or first thing this morning. We got that letter from the Meridian Hill Neighborhood Association this morning. We have not had the opportunity to respond and quite frankly, again, our position has been we were okay without their letter of support, if it was contingent upon the two conditions. They have not expressed again, they have not expressed outside of those concerns opposition to the application. In fact, I do have an email from them that says they appreciate the fact that this is a less intense use than some of the other uses that can go into this space as a matter of right.

With regard to the letters that have been submitted --

BZA CHAIR JORDAN: Are you making argument or are you providing redirect? It sounds like you're making argument.

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MS. BATTIES: Well --

BZA CHAIR JORDAN: If you don't have redirect, we can go right to the argument.

MS. BATTIES: I do want to just clarify some of the things that were raised with regard to the noise.

BZA CHAIR JORDAN: Like you're going to question your witnesses?

MS. BATTIES: I just want to --

BZA CHAIR JORDAN: You want to then do argument and we can do that if you're not going to ask any more questions of your witnesses, then we can simply go to your closing where you have the opportunity to do your argument and then we go to Mr. Sullivan for his. I'm just trying to make sure we're all on the same page.

MS. BATTIES: I just want to clarify. Mr. Sullivan raised the question -

-

BZA CHAIR JORDAN: I'm trying to-

-

MS. BATTIES: Okay.

BZA CHAIR JORDAN: You can say all of that in your argument in your closing. We're at the time of redirect. And redirect is asking questions of the witnesses. Right?

MS. BATTIES: I was going to ask a question of Mr. Joshi, based on something that was raised.

BZA CHAIR JORDAN: Ask the question.

MS. BATTIES: Okay. The question was asked whether or not noise levels would be different at 10 p.m. or 10 a.m. or 10 p.m. or 2 a.m. in the morning, what have you, in the residential units above. And in your opinion, given that the number of dogs in the dog daycare center would be significantly reduced during those hours, would you expect the same noise impact from the dog daycare center at those times than you would at 10 a.m. or 11 a.m. when you studied, measured the noise level?

MR. JOSHI: No.

MS. BATTIES: Okay. And can you please just clarify for the record what is the decibel levels that would be -- the noise levels generated by 50 dogs barking at one time?

MR. JOSHI: Ninety-five decibels.

MS. BATTIES: Okay, given the current construction of the building, what is the noise levels that would be experienced in the residential units above from the worst case scenario of 50 dogs barking?

MR. JOSHI: Fifty to 55 decibels.

MS. BATTIES: Is that higher than the current level, noise levels in the unit?

MR. JOSHI: Yes.

MS. BATTIES: Are you able to mitigate the noise levels generated by the dog daycare center with additional construction measures?

MR. JOSHI: Yes.

MS. BATTIES: With the three recommendations that you have made for this case, would the noise levels generated by the dog daycare center exceed the current noise levels in the units?

MR. JOSHI: No.

MS. BATTIES: So is it your testimony that you would be able to completely mitigate the noise impacts from the dog daycare center if the applicant employs the three recommendations that you provided.

MR. JOSHI: Yes.

MS. BATTIES: Thank you. One more question. In your report, it was raised about -- it would rarely be the case that you would have excessive noise levels. Would you state or is it your opinion that the noise levels generated from the dog daycare use would be objectionable to the neighboring properties as described under the zoning regulations.

MR. JOSHI: In my opinion, no.

MS. BATTIES: Thank you.

BZA CHAIR JORDAN: Recross?

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MR. SULLIVAN: Sure. On what basis can you determine that even if somebody heard a dog barking that that particular noise wouldn't be objectionable?

MR. JOSHI: If the noise level is above the background noise level, the ambient, then more -- if it is more than ten decibels, then it could be considered objectionable because if it less than ten decibels, you would not hear that. It would be part of the ambient.

MR. SULLIVAN: Did you amend your report when you said you rarely expected to be exceeded and now it will never exceed? Would you say that's an amendment of your report?

MR. JOSHI: The reason I say rarely expected is because we have used the word approximately 50 dogs. If I had used the word 50 dogs, then I would say it would not exceed 95 decibels.

MR. SULLIVAN: There was some discussion about dogs, number of dogs being significantly reduced at night. Is that something the applicant committed to?

MS. BATTIES: That's not a question for Mr. Joshi.

MR. SULLIVAN: Have they told him that they committed to it, because that was his assumption?

MS. BATTIES: That's the nature of the operation.

MR. KASDORF: I can respond to that. We average about ten dogs boarding at night, so it is substantially reduced during the evenings.

MR. SULLIVAN: No further questions.

BZA CHAIR JORDAN: Ms. Allen?

VICE CHAIRMAN ALLEN: Thank you, Mr. Chairman. I do have a couple of questions for the applicant, whoever is the appropriate person. I thought that I heard you earlier say that there were five apartments above that would be on the second floor above the facility, three of them were in support and one was vacant and you couldn't reach the fifth one, correct?

MR. LICKO: That's correct.

VICE CHAIRMAN ALLEN: And now it appears that at least three of them, if not four of them, are in opposition. Were you aware of that?

MR. LICKO: We were aware that one that was nearby, not above, was opposed to it by finding out through petition that City Dogs, Incorporated posted on the Internet. And we reached out to them and wanted to make sure that he had all the facts. He responded to us, said thank you for reaching out to me. I need to get back with City Dogs, Incorporated because I let you know my -- whether I'm going to withdraw my objection.

VICE CHAIRMAN ALLEN: Okay.

MR. LICKO: The other one in 225, we found out when party status was filed. They originally signed the petition or signed our letter of support. I'm not sure why they changed their mind. And the other one I was not aware of.

VICE CHAIRMAN ALLEN: Okay.

Thank you for that. And then this is just a question. I have had dogs my whole life and I know that -- well, I guess this is really the question for you. Even with -- maybe for Mr. Joshi, even if humans would not be able to hear the barking, would other dogs that maybe live in the building be able to hear it and does that mean that even if it was ambient to 35 or whatever, that dogs could hear it and actually bark?

MR. JOSHI: The frequency range of the dog is much higher than the human frequency range, so they can hear and I'm talking about a normal dog. So a normal dog would be able to hear up to six kilohertz and humans can only hear up to 20 kilohertz. So they can hear a lot higher frequencies than we do.

VICE CHAIRMAN ALLEN: So then if dogs were living in the building or I'm assuming dogs can live in this building, then they could potentially hear the dogs if they were barking downstairs?

MR. JOSHI: It's possible.

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VICE CHAIRMAN ALLEN: That's what I was wondering. Thank you.

BZA CHAIR JORDAN: How high is six kilo -- what was that?

MR. JOSHI: Six kilohertz.

BZA CHAIR JORDAN: How high would that go in the building? Is that all just second floor or third floor?

MR. JOSHI: The six kilohertz is a high frequency, so it will not travel that far.

BZA CHAIR JORDAN: Okay.

MR. JOSHI: And low frequencies travel longer than high frequencies.

BZA CHAIR JORDAN: Got you. Okay.

MR. KASDORF: Could I respond to the --

BZA CHAIR JORDAN: I forgot what we were doing. I think we were in cross examination, weren't we? We finished. Cross examine, right? Recross, you're in your recross. We just jumped in.

MR. SULLIVAN: I have one quick question. So the person that you talked to on the second floor, they found out about this application from City Dogs rather than from the applicant themselves, I take it?

MR. LICKO: We tried to reach out to them. So I don't know the answer to that question.

MR. SULLIVAN: Thanks. I don't have anything further.

BZA CHAIR JORDAN: Then we'll go to closing, five minutes closings from counsel, please, unless the Board has any other questions?

Okay, Ms. Batties?

MR. KASDORF: Could I respond to the --

BZA CHAIR JORDAN: Not at this point.

MR. KASDORF: Okay.

BZA CHAIR JORDAN: Go ahead, Ms. Batties.

MS. BATTIES: First of all, we just saw the letters, obviously, we just got the letter from the tenants in support -- opposing the application. Of these tenants, none of them live directly below the dog daycare -- I'm sorry, none live directly above the dog daycare center. In fact, two of them weren't even listed on Mr. Sullivan's petition, so what I'd like to do is submit -- it has handwriting on it, but submit into the record --

MR. SULLIVAN: I'll stipulate. And I never said they lived above the use. I said they live on the second floor. Jessica Larkin, one of the people that authorized me to represent is above.

BZA CHAIR JORDAN: That's part of your argument, Mr. Sullivan. That's part of your argument.

MS. BATTIES: That said, obviously the zoning regulations when they talk about residential units abutting this type of use, we looked at that standard and we did our analysis to look at those units that would be directly situated directly above the dog daycare center use so that we would understand the impact on those units that are immediately above the space.

None of the units represented in the letters that you're going to get or that have been submitted into the record are directly above the dog daycare center space and I don't think any testimony or any evidence has been provided by Mr. Sullivan that they would be, in fact, at all impacted by the dog daycare center space on the first floor of the building. So I want to highlight that point.

Nothing provided by the opposition demonstrates that the noise levels would be objectionable to the neighboring properties. In fact, there are no neighboring properties. We're the only building on this section of 14th Street between Florida Avenue and Belmont Street. There are no adjacent properties. The Comcast building is the only abutting use and there are no people that live there. So I think that's important to point out. Nothing provided in the record today supports any impacts to the units that are represented in Mr. Sullivan's testimony or opposition and nothing has been submitted that would challenge or question the fact that odor from our use would emanate to the units above.

So I think we have demonstrated and the Office of Planning has concluded that we have met the criteria for special exception use for an animal boarding use on the property as that use is defined under the zoning regulations that includes not only the operation of the daycare center, but pet grooming. We have proffered conditions that reflect the Office of Planning report. The concerns that were raised by the Meridian Hill Neighborhood Association as well as the recommendations to mitigate, completely mitigate any noise to the residential units above, and again, I think it's important to state that none of the units above -- the tenants in those units are neither here, nor have they submitted letters in opposition to the application. So I think that's very important to point out.

The construction measures that the applicant is willing to employ will cost about \$100,000 to \$150,000 above the regular tenant improvements that will be required to build out this space for the dog daycare center. It's a considerable financial investment when you talk about \$150,000 on top of a half million dollars that they're going to -- that's required to build out this space. It is a considerable financial investment on behalf of the dog daycare center operators. And even though competition is not a proper consideration for the Board's review of this application, we have reason to believe, the tenant in unit 219 has signed City Dog, Inc.'s petition opposing this application. They have expressed to the building owner that they would not withdraw their objection without speaking to the people at City Dogs. So we have every reason to believe that there is a connection and their basis of that objection from City Dogs, Inc. and the tenant in 219 is simply competition. They don't want another dog daycare center in

close proximity to them.

I think our client and the operators of the proposed dog daycare center have really represented a willingness to be responsible tenants and business and a good neighbor in the community by even entertaining the thought of changing their name in order to address the concerns of --

BZA CHAIR JORDAN: You're over now. Let's get to your wrap up.

MS. BATTIES: I'm sorry. So for all of the reasons that we've stated, based on the Office of Planning's report, we would request the Board's approval of the application as amended. Thank you.

BZA CHAIR JORDAN: Thank you. Mr. Sullivan, five minutes.

MR. SULLIVAN: Thank you, Mr. Chairman. I would address one issue right up front. I represent four residents who live on the second floor. So to dispel the notion that they're controlled by somebody else, I'm surprised that I got four residents that -- four residents came to me because several of them expressed concerns about retaliation because they have a contractual relationship with the person that owns the space below them. Even still, they were so concerned about this use that four of them came forward and asked me to represent them and they authorized me to represent them. And I got an email from one of them today and I might as well, he said "thanks for fighting for us." So this has nothing to do with City Dogs, a client that I had in another case. This has to do with the residents. And to think that they would put themselves out on behalf of somebody that they have no relationship with and really risk their necks to express their opposition it's not credible.

Just generally here, we're in new territory literally with this use. There's been maybe eight or nine dog daycare applications over the last seven or eight years since the regulations were instituted. And the Zoning Commission when they adopted those regulations made several different restrictions of proximity to residential use. There was a restriction for an abutting resident zone. There's a restriction for residence use, for pet grooming and for animal shelters. They obviously had the intention or the underlying assumption that this use should have some separation between residential uses because you would find out that even with an incredible amount of retrofitting that they're proposing, you still will occasionally hear dogs. That's how difficult it is to separate this noise, whether it's objectionable or not I think is kind of an objective thing, not anything you can really measure. It depends on the person.

So I think this is totally different than any other application for dog daycare that's come before you. I think whether or not it abuts across the alley, it's just -- the larger picture is that there's residential use all around it.

On the issue of the main crux of this is 735.3. It says that the building shall be sound proof in such a way as to produce no noise or odor objectionable to nearby properties. And I think even with the opinion of the expert and the retrofitting they've testified even though they've tried to make the issue a little foggy that it won't exactly be soundproof and you will occasionally hear dogs and also that it would be more likely that dogs could live in this apartment building will hear those dogs and be subject to barking which could exacerbate the noise.

Finally, they keep talking about 50 dogs, but refuse to commit to 50 dogs. And so I don't think sticking at 50 dogs and saying that's the worst case scenario is really credible either.

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One last minor point I didn't really want to get this far into the details, but I don't know how poop goes through a grass mat, but that's my last comment. That's all I have. Thank you, Mr. Chairman.

BZA CHAIR JORDAN: I thank you. Then we will conclude this hearing and move this for a decision date. However, I would like to have findings of facts and conclusions of law submitted by both parties, please.

Mr. Moy, when can we put this on for decision?

MR. MOY: I think --

BZA CHAIR JORDAN: For some time in March.

MR. MOY: I'm looking at March. I'm debating whether March 4th or March 11th -- I'm thinking March 11th.

BZA CHAIR JORDAN: March 11th. Okay. So then by March 4th -- well, yes, by March 4th, we need your findings of facts and conclusions of law filed, please.

MS. BATTIES: Thank you.

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MR. MOY: Once again, the decision will be March 11th and the findings of fact, conclusions of law by March 4th.

VICE CHAIRMAN ALLEN: I wanted to say that I really am impressed by your facility and I think I've learned more about poop than I've ever learned in my life. I can't wait until they say what did you today, mom? And I have to say the chill music, that was like -- that was pretty cool, too. Just a random comment. Have nothing to do with the case.

BZA CHAIR JORDAN: Real random. I think we've pooped enough here today.

(Laughter.)

Thank you, so this hearing is over. Mr. Secretary, do we have anything other things before the Board today?

MR. MOY: Not from the staff, sir.

BZA CHAIR JORDAN: That's a good thing, so we stand adjourned.

(Whereupon, at 2:33 p.m., the hearing was concluded.)

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