

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

MARCH 11, 2014

+ + + + +

The Regular Public Meeting  
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 J. Jordan,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOT  
PAUL GOLDSTEIN  
STEPHEN GYOR  
STEPHEN MORDFIN

DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

LOUIS BOOKER

The transcript constitutes the  
minutes from the Public Meeting held on March  
11, 2014.

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

2 BZA CHAIR JORDAN: All right. Mr.  
3 Moy, if you would please call the first case on  
4 our decision agenda, please.

5 MR. MOY: Yes sir, that would be of  
6 the one, two, three, four, five, six cases  
7 before the Board for decision. The first and  
8 only case on the expedited review calender is  
9 Application Number 18721 of Stephen Kelleher.

10 And as the Board will recall this is  
11 a special exception case under Section 223, not  
12 meeting the lot occupancy for side yard and  
13 nonconforming structure.

14 In your case folders there are three  
15 filings, one, of course, from the applicant on  
16 Exhibits 1 and 3 and in reply under Exhibit 20,  
17 a report from the Office of Planning.

18 No letter from ANC 1B and two  
19 letters of support under Exhibit 12. The Board  
20 is asked on the merits of the request for the  
21 special exception relief.

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1                   BZA CHAIR JORDAN: All right.  
2 Thank you, Mr. Moy. Is the Board ready to  
3 deliberate on 18721? This is one, I think,  
4 that the Office of Planning report certainly  
5 becomes very persuasive and recommends support  
6 of this application.

7                   It's a 223 where request is for  
8 relief from 403 lot occupancy, 405 side yards  
9 and then nonconforming use. This would be one  
10 I could support. Any other --

11                  ZC CHAIR HOOD: I would agree, Mr.  
12 Chairman. I did see someone raise their hand.  
13 I'm not sure if they were here in opposition,  
14 but there being a raise of hand, we'll make a  
15 note of it --

16                  BZA CHAIR JORDAN: Okay. But this  
17 --

18                  ZC CHAIR HOOD: -- when we're  
19 talking about this case.

20                  BZA CHAIR JORDAN: All right.  
21 This is on decision case, so there's --

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1 ZC CHAIR HOOD: Okay.

2 BZA CHAIR JORDAN: -- no testimony  
3 or any other support being given. There's a  
4 proper expedited, unless someone's here in  
5 opposition of this --

6 ZC CHAIR HOOD: That's --

7 BZA CHAIR JORDAN: -- case --

8 ZC CHAIR HOOD: -- my point because  
9 --

10 BZA CHAIR JORDAN: -- separate of  
11 somebody --

12 BZA CHAIR JORDAN: -- I know this is  
13 an expedited review.

14 BZA CHAIR JORDAN: Is somebody here  
15 for --

16 ZC CHAIR HOOD: Okay.

17 BZA CHAIR JORDAN: -- 18721?

18 ZC CHAIR HOOD: Okay.

19 BZA CHAIR JORDAN: All right.  
20 Somebody was just stretching.

21 ZC CHAIR HOOD: They just wanted us

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1 to know they were here.

2 BZA CHAIR JORDAN: They're just  
3 stretching.

4 ZC CHAIR HOOD: Okay.

5 BZA CHAIR JORDAN: Okay. Got it.  
6 Thank you, Mr. Hood. That's why we pay you the  
7 big bucks. Well, I appreciate it. Thanks.  
8 Board, any other discussion about this matter?  
9 All right. With that, then, I would move that  
10 we grant the request to relief in 18721.

11 ZC CHAIR HOOD: Second.

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

15 (Multiple ayes.)

16 BZA CHAIR JORDAN: Those opposed  
17 nay. And the motion carries. Mr. Moy?

18 MR. MOY: Yes, the staff would  
19 record the vote as five to zero. This on motion  
20 Chairman Jordan approved the request for the  
21 special exception under the expedited review

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1 calendar provisions.

2 Second the motion, Mr. Hood,  
3 Chairman of the Zoning Commission. Also  
4 support Ms. Heath, Vice Chairperson Allen and  
5 Mr. Hinkle. The vote carries five to zero.

6 BZA CHAIR JORDAN: All right.  
7 Summary order please.

8 MR. MOY: Thank you, sir.

9 BZA CHAIR JORDAN: No, I appreciate  
10 it, Mr. Hood. No, no, no. We're a team here.  
11 I might miss it. Don't put the burden on me.

12 MR. MOY: Do you have a preference  
13 for the next case, Mr. Chairman?

14 BZA CHAIR JORDAN: Yes, let's just  
15 keep right on rocking and rolling.

16 MR. MOY: Okay. So with that --

17 BZA CHAIR JORDAN: It doesn't get  
18 any easier.

19 MR. MOY: Okay. I don't know if  
20 you're going by my list or you --

21 BZA CHAIR JORDAN: No, we're going

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1 18651. But, you know --

2 MR. MOY: That's fine then.

3 BZA CHAIR JORDAN: -- just the  
4 docket, yes.

5 MR. MOY: That's fine then. Okay.  
6 That would be Application Number 18651 of Peter  
7 Fitzgerald, pursuant to 11 DCMR 3103.2.

8 This is before the Board requesting  
9 variances from lot area, lot occupancy, rear  
10 yard and off street parking and the alley width  
11 requirements at property, where is the  
12 property, okay, 319A Street Northeast and the  
13 rear of 319 and 321A Street Northeast.

14 As the Board will recall, the Board  
15 completed public testimony, closed the record  
16 on January 29th and scheduled it's decision on  
17 March 11th.

18 The Board requested additional  
19 information. Those filings are in your case  
20 folders, Mr. Chairman. Let me go over those  
21 really quickly. From the applicant's filing

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1       it's under Exhibits 59 and 61. The opposition  
2       party has filed under Exhibits 60, 62.

3               They were allowed to reply to the  
4       applicant's filing of February 25 which is  
5       under Exhibit 63. And as well as the applicant  
6       allowed to reply to the opposition party's  
7       brief under Exhibit 64.

8               Now, after that, Mr. Chairman, we  
9       have some preliminary matters. There have  
10      been filings that was not requested by the  
11      Board.

12              The first one is the applicant's  
13      request to the opposition party's request of  
14      their February 25th filing. I know that's a  
15      mouthful. And of course, there have been  
16      counter-arguments to that filing by the  
17      opposition party. And I have actually, four  
18      filings.

19              BZA CHAIR JORDAN: Mr. Moy, let me  
20      cut --

21              MR. MOY: Go ahead.

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1 BZA CHAIR JORDAN: -- to the chase

2 --

3 MR. MOY: Go ahead.

4 BZA CHAIR JORDAN: -- so to save you  
5 all of that.

6 MR. MOY: Thank you.

7 BZA CHAIR JORDAN: Were those  
8 accompanied by a motion or waiver of acceptance  
9 to the Board or were they just filed? Was there  
10 motions requesting the Board leave the file  
11 that's documented?

12 MR. MOY: My understanding, Mr.  
13 Chairman, is they were just filed.

14 BZA CHAIR JORDAN: Okay. Then  
15 we're not going to accept them. And the Board  
16 was very clear about what it wanted in this  
17 case. And in all cases, we'll say what we want  
18 supplemented.

19 Well, this thing has gotten into, I  
20 guess, a paper battle which went well beyond  
21 what the Board needed. And so, it would be my

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1 suggestion to the Board that they're not  
2 accepted into the record.

3 In fact, they have not been  
4 presented to the Board properly to be accepted  
5 into the record. So we'll just move on. Is  
6 there any other announcements?

7 All right. Is the Board ready to  
8 deliberate on this case? I mean, there's a lot  
9 of issues arising out of this one, so if you are,  
10 then.

11 We also have pending in front of us,  
12 which also becomes very interesting, a motion  
13 that was made during the hearing, a motion to  
14 dismiss this matter, which the parties have  
15 briefed and have briefed the Board.

16 The Board has read the files and all  
17 the filings and I would initially say that the  
18 motion to dismiss was well pled, however, now  
19 it becomes moot since the applicant has cleaned  
20 up the application.

21 Initially, the opposition was

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1 correct that the application was not filed by  
2 the owner of the property nor properly  
3 authorized by the owner of the property.  
4 However, subsequently, the owner of the  
5 property did acquiescence into it and submitted  
6 the proper document.

7           There is a difference between a  
8 trust and an individual, although the  
9 individual initially have given the  
10 authorization. But that individual actually  
11 is the trustee for the trust. And the document  
12 should have reflected that, which they did  
13 clean up.

14           And it would be my suggestion to the  
15 Board that we waive the previous requirement  
16 that the applicant be the owner since the owner  
17 did, but did not make the technical change by  
18 actually adding under his name trustee of the  
19 trust. They subsequently did do that.

20           If that's okay with the Board, then  
21 we do that by consensus and deny the motion to

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1 dismiss, but say that it was technically  
2 correct.

3 Board, any thoughts or discussion  
4 regarding -- well, let me say, there's only  
5 Kathryn Allen and I are the only two  
6 participating. Robert Miller, member of the  
7 zoning commission is not here, however  
8 submitted an absentee ballot I understand. Is  
9 that correct, Mr. Moy?

10 MR. MOY: That's correct, Mr.  
11 Chairman.

12 BZA CHAIR JORDAN: All right. So  
13 the other members sitting on the dias today were  
14 not participants in this case. All right. So  
15 going to the substance of the request.

16 I would be inclined not to grant the  
17 request by the applicant in this matter on both  
18 lot 827 and lot 22 and the combined lots of 827  
19 and lot 22.

20 I do not find or believe that lot 827  
21 shows any exceptional condition that would

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1 allow it to have any special exception. It's  
2 a regular lot that's sitting in the back.

3 And the applicant made the argument  
4 that the garage is not suitable for use, but the  
5 garage has been used by the applicant for  
6 storage and other things.

7 And as I talk about this a little  
8 further, I'm still concerned about the  
9 dilapidated state, the condition of the  
10 property from an owner of the property who's  
11 owned the property for a period of time and  
12 letting the property deteriorate and then come  
13 in and say well, the property's in a bad state,  
14 so we need zoning relief.

15 And that certainly goes toward my,  
16 what I think when we talk about this use  
17 variance that's being requested. So, and also  
18 there's a requirement for that particular part  
19 from the house on 827 to have parking. And so  
20 that's a requirement for them to have a  
21 particular parking space. And I don't think

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1 the argument was made, at least in a credible  
2 way, by me in my estimation it hasn't been done.

3 Also I think that it has an impact  
4 on the overall parking situation in the  
5 neighborhood as been argued by the opposition.

6 I don't really find that there's any  
7 uniqueness in the one lot that's less than 500  
8 square foot. And again, going back to the fact  
9 that the applicant is a real estate management  
10 company, they also repair real estate.

11 And they shouldn't be allowed to  
12 intentionally let this property neglect down to  
13 a condition that they didn't come to this Board  
14 saying it's unique condition is because it  
15 supposes a hardship because of the condition of  
16 the property.

17 Also there is viable alternatives.  
18 The uses that may not max profit for the  
19 applicant, but that there's viable options that  
20 would generate income and therefore the  
21 applicant would not be denied all reasonable

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1 use of the property if not allowed relief.

2 I also believe that the applicant  
3 regardless does not pass the third test. I  
4 believe that the relief would cause a  
5 substantial negative impact on the community,  
6 parking problems as was presented here by the  
7 opposition.

8 The parking problems be increased  
9 and it's a alley that's been improperly used by  
10 everyone, at least, particularly by the  
11 applicant.

12 Locating the utility service meters  
13 may impact the already challenged alley. The  
14 placement of refuge, although the applicant  
15 said that it can go inside the building, I'm  
16 still not convinced that that's going to be the  
17 resolution.

18 I find the Office of Planning's  
19 report to be persuasive and supported by the  
20 credible weight of the evidence. The subject  
21 property did not exhibit uniqueness for any

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1 particular condition.

2 I think that the, as I said, that the  
3 condition of the property itself imposed and,  
4 therefore, would not rise to the level  
5 presenting a hardship for use variance.

6 Additionally, the zoning  
7 administrator does allow for the replacement of  
8 the dilapidated structure in the back and there  
9 has not a case been made for that.

10 What else. You know, I'm just  
11 thinking. So the request for relief, as I  
12 said, also would cause a detriment to the public  
13 good.

14 The new structure would actually  
15 occupy 100 percent of the lot where there would  
16 be no rear yard and no property line setback and  
17 which would have a impact on the light and air  
18 of the adjoining properties in the  
19 neighborhood.

20 The design has a lot line window of  
21 north and south. It would face directly into

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1 the back of the other lot, 827. But it would  
2 impact the other neighbors that's in that whole  
3 kind of, it's a court, the whole court area.

4 VICE CHAIR ALLEN: Yes.

5 BZA CHAIR JORDAN: What else is  
6 there to say about this thing? You can guess  
7 I wasn't happy with it was I? Now, and more  
8 importantly, the economic hardship argument I  
9 don't believe was made.

10 I do believe that, let me say this  
11 for the record, the opposition's  
12 counter-argument about the economic hardship  
13 was way off.

14 That what the opposition argued is  
15 not how we evaluate economic hardships. The  
16 fact that the property could be sold doesn't  
17 mean that that negates an owner's economic  
18 hardship. Although I do not believe that the  
19 owner has made a case for economic hardship.

20 We requested, here's the thing,  
21 when this was first set, remember, we asked for

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1 supplemental documents because the applicant  
2 did not make the case sitting here. So we kind  
3 of threw the applicant a bone and said send us  
4 some additional documentation.

5 And one of which, was that we  
6 requested the applicant to show us the  
7 potential growth value and rate of the  
8 property. They didn't submit anything on  
9 that.

10 They also didn't provide the  
11 marketing data to support their sales values.  
12 I don't know where the sales values came from  
13 that they put in their documents that we did  
14 receive, so that could offset the return of  
15 investment. There was no support for that.

16 Then there was no documentation  
17 submitted by the applicant showing the cost of  
18 funds or the terms of the cost of funding money  
19 as it was used into their documentation that  
20 they submitted.

21 Now, the ANC in this matter

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1 supported this, the application. However, the  
2 ANC did not provide any reason why they  
3 supported this application other than saying  
4 that the applicant has agreed to limit the time  
5 of construction or the time period for  
6 construction, which is not a zoning issue for  
7 this particular board.

8 So therefore the request by the ANC  
9 would not have that level of impact on this  
10 particular matter. That all being said is why  
11 I would offer to the Board that we would deny  
12 this request for relief --

13 VICE CHAIR ALLEN: Can we vote?

14 BZA CHAIR JORDAN: -- across the  
15 board, yes. Yes.

16 VICE CHAIR ALLEN: Did you move?

17 BZA CHAIR JORDAN: No, you can move  
18 it if you want.

19 VICE CHAIR ALLEN: I think you have  
20 well-articulated the issues with this case, Mr.  
21 Chairman and I would so move.

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1                   BZA CHAIR JORDAN: Well, you know,  
2                   stepping on my tongue and anyway. And I would  
3                   second the motion. Ready for the question?  
4                   Those in favor of the motion signify it by  
5                   saying aye.

6                   (Multiple ayes.)

7                   BZA CHAIR JORDAN: Those opposed?  
8                   Mr. Moy.

9                   MR. MOY: Mr. Chairman, before I  
10                  read the final vote, as you indicated earlier,  
11                  I do have an absentee ballot from a third  
12                  participant from Mr. Miller. And there's no  
13                  need for me to read all of his comments because  
14                  he had two narratives.

15                 The second narrative was that if the  
16                  Board voted on one motion to deny it then he  
17                  would concur with that motion. I'd also want  
18                  to add, in his comments he also said that he  
19                  voted also to deny the motion to dismiss for  
20                  lack of standing. I want to include that for  
21                  the record.

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1 BZA CHAIR JORDAN: Okay.

2 MR. MOY: So again, in a long way,  
3 we voted to deny.

4 BZA CHAIR JORDAN: Okay.

5 MR. MOY: So that would give a final  
6 vote then of three to zero. This motion, I  
7 believe, the motion was made by Chairman  
8 Jordan?

9 BZA CHAIR JORDAN: No, by --

10 MR. MOY: Okay. The motion was  
11 made --

12 BZA CHAIR JORDAN: -- my vice  
13 chair.

14 MR. MOY: -- by Vice Chair Allen.  
15 Sorry for that. Second for the motion is Mr.  
16 Chairman Jordan and also support of course, Mr.  
17 Miller. So the vote carries three to zero to  
18 deny.

19 BZA CHAIR JORDAN: Great. Thank  
20 you. That's a full order.

21 MR. MOY: Yes, sir. The next case

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1 for a decision is Application Number 18702.  
2 This application has been amended as well as the  
3 caption title. So it's now referred to as  
4 Application Number 18702 of View 14  
5 Investments, LLC.

6 And it was also amended only to  
7 request relief from special exception and  
8 animal boarding under Section 735. The Board  
9 requested addition information in the form of  
10 draft findings of fact and conclusions of the  
11 law.

12 Those are in your case folders from  
13 the applicant under Exhibit 47 from the  
14 opposition party, referred to as concerned  
15 residents and neighbors of View 14 under  
16 Exhibit 48.

17 And the preliminary matter, Mr.  
18 Chairman, here is that there is a letter of  
19 clarification from the Meridian Hill  
20 Neighborhood Association which was not allowed  
21 or requested into the record. With that, the

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1 Board must act on the merits of the request for  
2 a special exception relief.

3 BZA CHAIR JORDAN: Okay. All  
4 right. This case came like a moving target.  
5 The applicant initially asked for a relief from  
6 736, 739 and 735 of the zoning regs.

7 Those as they're related to animal  
8 shelter and pet grooming were removed, Sections  
9 736 and 739. And now the before the Board is  
10 a request under 735 for special exception for  
11 the animal boarding of the property, to allow  
12 animal boarding.

13 So this is one that has some of the  
14 other issues. 735 calls for the Board to --  
15 that the requested use should not abut a  
16 residential zone.

17 Well, we don't define residential  
18 zone in the zoning regulations. We do have  
19 residential districts and we talk about  
20 residential use.

21 So not we have another kind of curve

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1 in what is residentially zoned. And it's been  
2 argued or thought that the residential zone  
3 actually meant the residential district.

4 Also part of this discussion is this  
5 Board, particularly in, I guess, the last two  
6 weeks have really discussed this issue what  
7 abut means.

8 An abut, this Board has found that  
9 abut does not mean that it has to be touching.  
10 And there's been a whole bunch of discussion  
11 about what abut means and that there has been  
12 discussion in other cases by experts about what  
13 abut means.

14 And in some kind of way, people kind  
15 of tend to fall out of that whole discussion  
16 about abutting and missing the zoning  
17 regulation 107.5 which talks about the district  
18 boundary lines.

19 A zoning district boundary lines  
20 runs to the middle of the alley and it begins  
21 on the other side if they change zones and it

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1 runs to the street and et cetera. 107.5  
2 defines for everyone, unless there's specific  
3 exceptions set off in the regulations, where  
4 the zoning boundaries lie.

5 We've heard over and over again that  
6 the alleys are not zoned. That's not correct  
7 unless there's a specific chapter that  
8 particular alley is not zoned. If it doesn't  
9 say, then the zoning district for that alley  
10 runs to the middle of the alley.

11 So I just want to make sure that  
12 that's clear. We've talked about it over and  
13 over again. We've had discussions in other  
14 cases about how far abutting goes. We've had  
15 Mr. Scher, in fact, say abutting goes 200 feet  
16 around the property.

17 And that's through the whole  
18 discussion coming out of that Wagtime case. It  
19 was a big discussion about that between him and  
20 Ms. Moldenhauer in that particular matter and  
21 this thing about abutting, again, not being

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1 defined by the zoning regs. But this Board has  
2 began to be consistent in how we treat it.

3 All that being said, then we have a  
4 dog facility that 735 says should not abut a  
5 residential zone. In my estimation, it abuts  
6 a residential zone because of all of what I just  
7 said, because right behind the property does  
8 include residential zone.

9 But more importantly, above the  
10 unit, above the retail space for where the dog  
11 facility's going to be, there's a residence.

12 Now, and I also believe that there  
13 has not been a complete showing that it would  
14 not have an impact on the surrounding community  
15 and neighborhood, particularly those people in  
16 the building.

17 We have a lot of testimony by  
18 experts that said the building's going to be  
19 soundproof from the standpoint of human ears  
20 should not be able hear the dogs barking  
21 upstairs.

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1                   However, the question was asked  
2                   what about if people upstairs also had dogs?  
3                   What was going to be the overall effect? And  
4                   the combined effect was that no one knew.  
5                   There was no evidence showing that it would not  
6                   excite other animals in the building, therefore  
7                   setting off additional noise.

8                   So my thought is that the  
9                   application should be denied and that's just my  
10                  thoughts. And I pass it on to the rest of the  
11                  Board to put their two cent in, or three cent  
12                  or four cent.

13                  MEMBER HINKLE: Thank you, Mr.  
14                  Chair. I have a slightly different take in  
15                  terms of the question on whether the use abuts  
16                  a residential zone.

17                  And I agree with you that the  
18                  language of the regulations is not clear in  
19                  terms of what is a zone and what we could  
20                  interpret that to be the residential district.  
21                  And I do interpret it like that.

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1                   However, the regulation states the  
2           animal boarding use shall not abut a  
3           residential zone. And what we have in this  
4           case is a use that's within a mixed use --

5                   BZA CHAIR JORDAN: Yes.

6                   MEMBER HINKLE: -- building. So I  
7           would agree with you that the subject property  
8           where the building resides is abutting a  
9           residential district, but I don't think the use  
10          itself that's being proposed abuts that  
11          residential district.

12                   And so I think, you know, in our  
13          previous case a couple weeks ago that use was  
14          the entire building and I think, so we could say  
15          that, you know, that was abutting the  
16          residential zone. I mean, I'm having an issue  
17          here thinking that the boarding use would not  
18          abut a residential zone.

19                   BZA CHAIR JORDAN: Yes.

20                   MEMBER HINKLE: Now then, as you  
21          said, we get into the issue of, well, there are

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1 the apartments on the next floor above. And  
2 so, do those constitute a residential zone as  
3 the regulation is written, and I'm not sure.  
4 I'm actually not sure.

5 BZA CHAIR JORDAN: Right.

6 MEMBER HINKLE: You know, so I'm  
7 struggling with this.

8 BZA CHAIR JORDAN: Zoning  
9 Commission? No. Anyway.

10 MEMBER HINKLE: I would love to  
11 hear how some of the other Board members feel.

12 VICE CHAIR ALLEN: Thank you.  
13 This case was very interesting and we heard a  
14 great deal of testimony. I think I made a  
15 comment about the fact that I probably knew more  
16 about dog poop after this case than I ever  
17 wanted to know in my lifetime.

18 However, what it really comes down  
19 to the issue for me, it was about the  
20 disturbance, you know, the abutting and the  
21 disturbance by the animals.

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1                   And while I understand Mr. Hinkle's  
2                   conflict in terms of the actual letter of the  
3                   language here, when I step back from it and look  
4                   at what was the point, and the point is to  
5                   protect those who are in a residential area from  
6                   having their, you know, life and enjoyment of  
7                   their life impacted by this.

8                   You know, to me, the abutting in  
9                   terms of the alleyway or the fact that there are  
10                  apartments above both seem to fall within that  
11                  for me.

12                 That if I look at what's the real  
13                 underlying issue of the regulation, that those  
14                 folks will be impacted. And so, I'm fairly  
15                 clear that, I think there's an issue and that  
16                 I would not be able to support this.

17                 BZA CHAIR JORDAN: All right.  
18                 Anyone else? Any other Board member?

19                 ZC CHAIR HOOD: Mr. Chairman, I  
20                 would agree with your comments. I'm not with  
21                 Mr. Hinkle. And I'm trying to, actually as

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1 someone who helped to write the animal boarding  
2 regulations, I'm trying to think and I think  
3 that your analysis is exactly correct.

4 Now, there is one alternative that  
5 I may want to recommend. I am prepared to vote  
6 against this today, but I would suggest that  
7 maybe the Zoning Commission, we look at that  
8 whole issue about resident zone.

9 Because I believe the intent is  
10 actually as our Board member Allen mentioned is  
11 that there was adverse impacts of residential  
12 zones in the area.

13 And think that the path we would go  
14 today if we would deny would be in line with the  
15 special exception rule of this 735. That's  
16 why, Mr. Chairman.

17 And also I just want to comment,  
18 Exhibit 27. We don't zone by competition. We  
19 don't make our rulings up here by competition.  
20 I understand that argument about the  
21 competition around the corner, up the street or

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1       wherever they are.

2                   And I would want everyone to  
3       understand that this Board, I'm sure, now I  
4       don't want to speak for the Board, but I'm sure  
5       the Board and the Commission as well, we don't  
6       do anything up here by competition. So, thank  
7       you, Mr. Chairman.

8                   BZA CHAIR JORDAN: Thank you. Any  
9       additional comments? Then let me do this.  
10      Why don't you declare that you made the record.

11                  MEMBER HEATH: Sure. Although, I  
12      was not present for the case, I did read the  
13      record, so I'm familiar with the case.

14                  BZA CHAIR JORDAN: Then, that being  
15      said, I would move that we deny the relief  
16      requested in case 18702.

17                  VICE CHAIR ALLEN: Second.

18                  BZA CHAIR JORDAN: Motion made and  
19      second. Any further discussion? All those in  
20      favor of the motion signify it by saying aye.

21                               (Multiple ayes.)

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1 BZA CHAIR JORDAN: Those opposed  
2 nay.

3 MEMBER HINKLE: Nay.

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

6 MR. MOY: I'm sorry, sir. Which  
7 way did Mr. Hinkle vote?

8 VICE CHAIR ALLEN: Nay.

9 ZC CHAIR HOOD: Nay.

10 MEMBER HINKLE: Nay.

11 BZA CHAIR JORDAN: No.

12 MR. MOY: Okay. That does it then.

13 BZA CHAIR JORDAN: Not support of.

14 MR. MOY: Yes, he didn't.

15 BZA CHAIR JORDAN: Nada.

16 MR. MOY: Okay, so --

17 BZA CHAIR JORDAN: I want to make  
18 sure we get all the definitions in, so.

19 MR. MOY: Got you. In that case,  
20 staff would record the vote is five to zero.  
21 This is on motion --

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1 VICE CHAIR ALLEN: No.

2 BZA CHAIR JORDAN: No, no, no. No,  
3 no, no, no, no, no, no, no.

4 MR. MOY: Oh, to the motion.

5 MEMBER HINKLE: Four, one, zero.

6 MR. MOY: See that's why I asked.

7 BZA CHAIR JORDAN: Need coffee?

8 MR. MOY: I already did, two cups.  
9 Okay. Then the staff would record the vote as  
10 four to one. That would be on the motion that  
11 Chairman Jordan to deny the application.  
12 Second the motion, Vice Chair Allen.

13 Also support of this motion are Ms.  
14 Heath and Mr. Hood. Mr. Hinkle is opposed to  
15 motion. And that would be the vote, four to  
16 one. The motion carries.

17 BZA CHAIR JORDAN: And I'm also  
18 going to ask if the Zoning Commission would take  
19 a look at this case and maybe take it as a nostra  
20 sponte and look at this as we talk about  
21 abutting and the dog facilities and the whole

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1 abutting issue because we're getting more and  
2 more of this than we need to be aware.

3 ZC CHAIR HOOD: Did you say sua  
4 sponte?

5 BZA CHAIR JORDAN: I said nostra  
6 sponte.

7 ZC CHAIR HOOD: Oh, excuse me. I'm  
8 not --

9 BZA CHAIR JORDAN: But it's the  
10 same.

11 ZC CHAIR HOOD: -- where you are.

12 BZA CHAIR JORDAN: I'm with you.

13 ZC CHAIR HOOD: Okay. I thought  
14 you said sua sponte, obviously. I would ask  
15 that the secretary of the Board of Zoning  
16 Adjustment work with secretary of the Zoning  
17 Commission. See if we can put that, at least,  
18 for a discussion to start it.

19 BZA CHAIR JORDAN: Yes.

20 ZC CHAIR HOOD: That would be very  
21 helpful. Thank you.

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1                   MR. MOY: Yes, I'll work with the  
2                   secretary of the Zoning Commission to make that  
3                   happen, Mr. Chairman.

4                   ZC CHAIR HOOD: So, she's back at  
5                   her desk listening, so she's probably already  
6                   started.

7                   BZA CHAIR JORDAN: Okay. Let's  
8                   continue on and then we'll take our little  
9                   break.

10                  MR. MOY: Okay. Assuming we're  
11                  moving forward, the --

12                  BZA CHAIR JORDAN: We're moving  
13                  forward. We're moving down.

14                  MR. MOY: -- next application for  
15                  the Board for decision is a motion for a  
16                  two-year time extension of Order Number 18289  
17                  of EQR-EYE Street, E-Y-E, LLC. This is a  
18                  request that the Board convene on February the  
19                  11th, 2014.

20                  The Board requested, actually, more  
21                  or additional supporting documentation from

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1 the applicant. That is in your case folders,  
2 Mr. Chairman, under Exhibit 48 as well as a  
3 supplemental report by the Office of Planning  
4 under Exhibit 49. So again, the Board has  
5 acted on the merits of the request for a  
6 two-year time extension under Section 3130.

7 BZA CHAIR JORDAN: All right.  
8 Thank you, Mr. Moy. This is one where  
9 initially the request for the extension was not  
10 supported by an affidavit or any backup  
11 documentation supporting their argument that  
12 the economy did not allow for this development  
13 to go forward.

14 They have subsequently, in my  
15 belief, remedied that situation by this  
16 supplemental filing. And I could support the  
17 granting of the extension. Anyone else?

18 MEMBER HINKLE: No, I agree with  
19 you, Mr. Chairman. I think they demonstrated  
20 that they've been working towards this project  
21 significantly and have made a number of efforts

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1 to do so. So I also support the applicant.

2 BZA CHAIR JORDAN: Anyone else?  
3 Then I would move that we grant the extension  
4 as requested.

5 ZC CHAIR HOOD: Second.

6 BZA CHAIR JORDAN: Motion made and  
7 seconded. Any further on readiness? All  
8 those in favor signify it by saying aye.

9 (Multiple ayes.)

10 BZA CHAIR JORDAN: Those opposed --  
11 that was kind of late, delayed. We're in  
12 harmony. All right. We've got to do our vote  
13 practice in harmony. All those opposed? Mr.  
14 Moy.

15 MR. MOY: Yes, thank you. With  
16 that staff would record the vote as four to  
17 zero. This on motion to Chairman Jordan to  
18 approve the application for a request for a  
19 two-year time extension under the requirements  
20 under Section 3130.

21 Also support of the second the

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1 motion, Mr. Hood. Also support Ms. Vice  
2 Chairperson Allen and Mr. Hinkle. And we have  
3 a Board member not present on this application.  
4 So again, the motion carries four to zero.  
5 Summary order, Mr. Chairman?

6 BZA CHAIR JORDAN: Yes.

7 MR. MOY: No?

8 BZA CHAIR JORDAN: Yes --

9 MR. MOY: Thank you.

10 BZA CHAIR JORDAN: -- summary, very  
11 summary. Okay. 18705. Do we have an  
12 absentee by Mr. Turnbull?

13 MR. MOY: For --

14 BZA CHAIR JORDAN: We did get one  
15 in? Okay.

16 MR. MOY: -- the upcoming case?

17 BZA CHAIR JORDAN: Yes.

18 MR. MOY: Yes.

19 BZA CHAIR JORDAN: Okay.

20 MR. MOY: Okay. This is the Appeal  
21 Number 18705 of Kingman Park Civic Association

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1 and W. Simpkins pursuant to 11 DCMR 3100 and  
2 3101 from the decision by DCRA to permit a  
3 street car maintenance garage repair facility  
4 and street car wash in the R-5B district at  
5 premises 2500 Benning Road Northeast.

6 The Board completed public  
7 testimony, closed the record, scheduled it's  
8 decision on to March 11th. This is at a hearing  
9 on February the 11th, 2014. Let's see, the  
10 Board, well, the record was closed. So the  
11 Board must act on the merits of the appeal.

12 BZA CHAIR JORDAN: Okay. Is the  
13 Board ready to deliberate on this case? Well,  
14 I don't know we're talking one, I guess by, I  
15 guess we are, okay.

16 This is one that's really just  
17 personally troubles me. And for the residents  
18 in the area and what they're going through with  
19 this particular development and the issue that  
20 impact them. And they've been all over trying  
21 to seek relief.

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1           My problem is that we have to follow  
2           the law in which required by the Board. So this  
3           is one of those tough decisions that, you know,  
4           you cringe internally about it, but you have to  
5           follow the law.

6           And the only issue on this case  
7           that's before the Board that was raised  
8           regarding Section 330 and 350 is whether the  
9           mass transit facility can be located in a R-5.  
10          And the regs are very clear that it's allowed  
11          to be there.

12          All the uses are supporting uses of  
13          the mass transit facility. And so it's my  
14          belief that the decision of the zoning  
15          administrator should be sustained as well as  
16          the fact that, let me add this, that the Board  
17          does not render decisions regarding the  
18          comprehensive plan. That's left for the  
19          Zoning Commission and not the Board of Zoning  
20          Adjustment.

21          And so that argument about it may

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1 not be in line with the comprehensive plan is  
2 not one which this Board has authority for as  
3 cases have indicated, but that's within the  
4 jurisdiction solely by the Zoning Commission.

5 So with that, I would move that the  
6 Board sustain the decision. Well, excuse me,  
7 let me go back. Any other comments on this?  
8 Then I would move that the Board sustain the  
9 decision of the Zoning Administrator.

10 MEMBER HINKLE: Second.

11 BZA CHAIR JORDAN: Motion made and  
12 second. Any further discussion? All those in  
13 favor, signify it by saying aye.

14 (Multiple ayes.)

15 BZA CHAIR JORDAN: Those opposed  
16 nay. Mr. Moy, for that one.

17 MR. MOY: Yes, sir. Before I read  
18 back the vote, we do have, as you indicated  
19 earlier, an absentee ballot from Mr. Michael  
20 Turnbull, who sat on this appeal. And his  
21 absentee vote is to deny the appeal.

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1                   So that would give a vote of three  
2                   to zero on the motion of Chairman Jordan to  
3                   uphold the decision of the Zoning  
4                   Administrator. Second the motion, Mr. Hinkle  
5                   and of course, in support, Mr. Turnbull. A  
6                   vote three to zero, the motion carries.

7                   BZA CHAIR JORDAN: All right.  
8                   Thank you. Okay.

9                   MR. MOY: Okay. The final case for  
10                  a decision before we go into open, Mr. Chairman,  
11                  is Application Number 18711 of 3112 13th  
12                  Street, LLC.

13                  As the Board will recall this  
14                  application was amended to remove the proposed  
15                  mechanical parking spaces and added relief from  
16                  Section 2001.3 for nonconforming structure  
17                  provisions for the court and confirming the  
18                  advertised variance relief from lot area under  
19                  401.3 and off street parking requirements under  
20                  subsection 2101.1.

21                  The Board requested additional

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1 information from the applicant. That was  
2 filed timely and is in your case folders under  
3 Exhibit 41. With that, the Board is to act on  
4 the merits of the request for relief.

5 BZA CHAIR JORDAN: Okay. This  
6 application was amended, am I correct, and  
7 eliminate the third floor, right? All right.  
8 That was the only real point of contention that  
9 everybody in the world had about this property.

10 I think the case has been made,  
11 especially in light of the amended relief that  
12 the amended application. So it would be my  
13 thought that the relief should be granted.

14 This property clearly exhibits  
15 uniqueness and exceptional condition that the  
16 building was a community-based residential  
17 facility.

18 It has a different layout overall in  
19 that there's no harm been shown to the community  
20 or zoning regulations. It'd have the same  
21 footprint, kind of the same density that was

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1 already there, probably, in fact, less density.

2 And then that there was a showing of  
3 the economic and feasibility due to the cost of  
4 the special renovations because of the building  
5 and some other things that had to be removed out  
6 of this building.

7 And I don't find that there's any  
8 detriment to the public good. So I would  
9 recommend that the Board grant the request of  
10 relief as amended. Mr. Hinkle?

11 MEMBER HINKLE: Yes, thank you. I  
12 tend to agree and I thought the supplemental  
13 information that the applicant provided in  
14 terms of the marketability of the units also  
15 helped to persuade me to support this  
16 application.

17 BZA CHAIR JORDAN: Any other  
18 discussion? Are we doing somebody? Oh, he  
19 wasn't with us. Okay. With that, did I move  
20 it? I'll make sure I move that. I move that  
21 we would grant the relief requested in the

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1 amended application.

2 MEMBER HINKLE: And I'll second  
3 that too.

4 BZA CHAIR JORDAN: All those in  
5 favor of the motion signify by saying aye.

6 (Multiple ayes.)

7 BZA CHAIR JORDAN: Those opposed  
8 nay. Do we have an absentee on this?

9 MR. MOY: Yes, sir. We have an  
10 absentee ballot from a participant by the name  
11 of Peter May. And his vote is to approve the  
12 amended application. As a matter of fact, he  
13 even, if I may read, his comment says "I  
14 appreciate the amendment of the application to  
15 allow the renovation within the existing  
16 building envelope." I'll stop there. And --

17 BZA CHAIR JORDAN: That's good.

18 MR. MOY: So that would get voted  
19 four to zero on motion of Chairman Jordan to  
20 approve with the amended relief. Seconded by  
21 Mr. Hinkle. Also support Ms. Heath and, of

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1 course, Mr. May.

2 BZA CHAIR JORDAN: Thanks. Then  
3 we can have a summary order.

4 MR. MOY: Yes, sir. Thank you.

5 BZA CHAIR JORDAN: All right.  
6 Then we're going to be in five-minute recess and  
7 back at it. And we'll start our hearing cases.  
8 Thank you.

9 (Whereupon, the foregoing matter  
10 went off the record at 10:53 a.m.)  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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