

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 16, 2014

+ + + + +

The Regular Public Hearing
convened in the Jerrily R. Kress Memorial
Hearing Room, Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:44 a.m., Lloyd J. Jordan,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALLISON MYERS, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR
STEPHEN MORDFIN
KAREN THOMAS
STEVEN COCHRAN
MATT JESICK

The transcript constitutes the
minutes from the Public Hearing held on
September 16, 2014.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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Public Hearings

WARD TWO

Application No. 18817 4
 of Teymour Zabihi,
 at premises 1738 14th Street, N.W.
 Special Exception, Square 207, Lot 69
 Postponed & Rescheduled to
 October 7th 2014, due to late posting

Application No. 18815 37
 of Amanda Bennett and Donald Graham
 at premises 2028 Hillyer Place, N.W.
 Area Variance, Special Exceptions
 Square 93, Lot 92
 Continued to October 21, 2014.

WARD THREE

Application No. 18816. 7
 of Lawrence Hirsh and Joan Melner,
 at premises 3307 Cleveland Avenue, N.W.,
 Square 2101, Lot 46. Approved.

WARD FOUR

Application No. 18819 15
 of Neighborhood Development Company
 at premises 4308-4310 Georgia
 Avenue, N.W., Square 2914, Lot 802
 Approved with conditions.

WARD SIX

Application No. 18794 63
 of Newton St. Dev. 3 LLC
 at 1740 New Jersey Avenue, N.W.
 Variance, Appeals
 Continued to October 28, 2014.

Public Hearing Concluded 129

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

2 (9:44 a.m.)

3 CHAIRPERSON JORDAN: 18817. I
4 just need the applicant's representative.

5 Okay, please identify yourself.
6 Please make sure your microphone is on.

7 MR. DeLEON: I'm Joel DeLeon, from
8 Architects Group Practice.

9 MR. SCHIEFER: Andrew Schiefer,
10 Architects Group Practice.

11 MR. ZABIHI: Teymour Zabihi,
12 owner.

13 CHAIRPERSON JORDAN: Last name
14 again?

15 MR. ZABIHI: Zabihi.

16 MALE PARTICIPANT: Z-A-B-I-H-I.

17 CHAIRPERSON JORDAN: I understand
18 there has been no posting in this case, or a late
19 posting?

20 MR. DeLEON: Yes, this is our first
21 time going through the BZA process, and there
22 was an item that was overlooked on our part. I

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1 found out late Friday that it was overlooked.

2 And then Monday, as soon as I found
3 out, I did whatever I could to do something for
4 that. So on Monday we did post it and I do have
5 pictures that it was posted.

6 In addition I just want to let the
7 Board know that we have gone through the ANC
8 process, met with the Commissioners, talked to
9 all the adjacent owners.

10 So we've been you know, very
11 forthcoming in trying to let everyone know, you
12 know, to present the best project and to let
13 everyone add to the process, or if they had
14 comments to try to hear them. So that's where
15 we are right now.

16 CHAIRPERSON JORDAN: Got you, and I
17 appreciate you doing the posting. However,
18 I'm very sorry, I don't think I can support
19 without the posting. It's just so important
20 for the community.

21 Everybody doesn't attend meetings.
22 And the posting is a requirement that we have.

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1 And we understand you're learning the process
2 and going through it, but we'd rather err if
3 anything, on the side of letting the community
4 know that there is something going on.

5 And it's just how we operate.
6 Unless the Board has another, further matter,
7 especially in that area. There may be one or
8 two people at least interested in knowing
9 what's going on.

10 So we would just reschedule this to
11 another date. Mr. Moy, if we may?

12 MR. MOY: Yes, sir. To allow the
13 requisite number of days then, which would be
14 required for the posting, we're looking at a
15 date of October, say October 21st would be best
16 for the Board.

17 CHAIRPERSON JORDAN: Yes, I mean if
18 that --

19 MR. MOY: Well, I could move it to
20 the 7th. There's no hearings during the week
21 of the 14th. We can do the 7th, but you have
22 an appeal case for that day. So if you want to

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1 add that to the appeal case on that docket?

2 MEMBER HINKLE: This one was really
3 ready to go, but for the posting. I don't think
4 it's going to take us long to work through that,
5 in my opinion.

6 MR. MOY: Fine. Let's do the 7th.

7 CHAIRPERSON JORDAN: Okay, so
8 October 7th.

9 MR. DeLEON: Thank you, very much.

10 CHAIRPERSON JORDAN: Yes, thank
11 you. And sorry again, but -- 816 please.

12 MR. MOY: Next application for
13 hearings, Application No. 18816 of Lawrence
14 Hirsh and Joan Melner.

15 This is a request, Mr. Chairman,
16 for a special exception to allow an accessory
17 basement apartment under subsection 202.10 at
18 3307 Cleveland Avenue, N.W., Square 2101, Lot
19 46.

20 CHAIRPERSON JORDAN: Good morning.
21 We'll let you get settled in, and please make
22 sure your microphones are turned on. And

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1 we've, and have you given your witness cards to
2 the court reporter?

3 MS. MELNER: Yes.

4 CHAIRPERSON JORDAN: All right, so
5 let's identify yourselves. Yes.

6 MR. HURST: My name is Ralph Hurst,
7 H-U-R-S-T. And I am an architect who provided
8 design services and the permit, construction
9 plans for the project.

10 CHAIRPERSON JORDAN: Okay, yes.

11 MR. HIRSCH: Lawrence Hirsch, I'm
12 the home owner along with my wife, Joanie, a few
13 seats down.

14 MS. MELNER: I'm Joan Melner.

15 CHAIRPERSON JORDAN: Good, thank
16 you.

17 MR. GRANT: And Aubrey Grant with
18 Emotive Architecture.

19 CHAIRPERSON JORDAN: Last name
20 again?

21 MR. GRANT: Aubrey Grant.

22 CHAIRPERSON JORDAN: Grant, okay.

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1 All right, this is a matter which the Board has
2 previously reviewed and I think the record
3 clearly supports the relief requested. Really
4 appreciate you getting letters of support.

5 Is there anybody in the
6 neighborhood that you didn't get letters of
7 support from? No, it's just a joke, but yes,
8 45 letters and signatures of support and we
9 really appreciate that.

10 We have ANC support, we have OP's
11 support, and I think as I said this is a file
12 that's -- I don't have any questions and I
13 believe the filings already supports your
14 request for relief, unless the Board has some
15 questions or anything they need to drill down
16 with the applicant on?

17 (No audible response)

18 CHAIRPERSON JORDAN: Then
19 typically you have the opportunity to do a
20 presentation to the Board, or you can waive
21 doing your presentation and we can proceed on
22 through the hearing. So, but it's up to you.

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1 As I always warn people, the only
2 thing you can do is probably talk yourself into
3 trouble, but it's up to you if you think there's
4 something else you need to add or tell us that
5 you really want to make a disclosure about, but
6 right now you're in good shape.

7 MR. HIRSCH: We'll accept your
8 wisdom and waive the presentation.

9 CHAIRPERSON JORDAN: There's been
10 a few that haven't. It's only been a couple,
11 but good, thank you. Then we will turn to the
12 Office of Planning and see if there is anything,
13 additions. Mr. Jesick.

14 MR. GYOR: Good morning, Mr.
15 Chairman, Member of the Board. Stephen Gyor,
16 with the Office of Planning. And we support
17 the applicant's request for relief and the rest
18 is on the record.

19 CHAIRPERSON JORDAN: Good, thank
20 you. Does the Board have any questions of OP?

21 (No audible response)

22 CHAIRPERSON JORDAN: Does the

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1 applicant have any questions of OP?

2 MR. HIRSCH: My only question is
3 for process. I'm not certain from here if we
4 receive some sort of document?

5 CHAIRPERSON JORDAN: You're not at
6 that point yet.

7 MR. HIRSCH: Oh, I'm sorry.

8 CHAIRPERSON JORDAN: We'll be glad
9 to advise you of that.

10 Is anyone here from the Department
11 of Transportation? Department of
12 Transportation?

13 (No audible response)

14 COMMISSIONER TURNBULL: Do we have
15 a letter? I don't have a letter from DDOT. Do
16 you see a letter?

17 MR. MOY: There's none on the
18 record either.

19 CHAIRPERSON JORDAN: Okay, well
20 that's, okay, it's not crucial to this relief.
21 Is anyone here from ANC 3C? ANC 3C?

22 (No audible response)

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1 CHAIRPERSON JORDAN: We do have a
2 letter of support from ANC 3C which we will
3 certainly give great weight to, and their
4 support of your project as I indicated earlier.

5 Is there anyone not seated at this
6 table who wishes to speak in support of this
7 application?

8 (No audible response)

9 CHAIRPERSON JORDAN: Anyone who
10 wishes to speak in support?

11 (No audible response)

12 CHAIRPERSON JORDAN: Anyone who
13 wishing to speak in opposition? Anyone in
14 opposition?

15 (No audible response)

16 CHAIRPERSON JORDAN: Well we'll
17 turn back to the applicant where we normally
18 have rebuttal et cetera, but it's not really
19 necessary at this point, so we will close the
20 hearing based upon the record. And I would
21 move that we grant the relief requested in
22 18816.

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1 MEMBER HINKLE: Second.

2 CHAIRPERSON JORDAN: The motion
3 made and seconded. All those in favor of the
4 motion signify by saying, aye.

5 (Chorus of ayes)

6 CHAIRPERSON JORDAN: Those
7 opposed, nay.

8 (No audible response)

9 CHAIRPERSON JORDAN: The motion
10 carries. Mr. Moy.

11 MR. MOY: This our staff would
12 record the vote as 3-0. This on the motion of
13 Chairman Jordan to approve the request for
14 relief, special exception under 202.10,
15 approved plans under Exhibit 5.

16 Seconded the motion, Mr. Turnbull,
17 also in support, Mr. Hinkle. We have two
18 members not present today and motion carries,
19 Mr. Chairman.

20 CHAIRPERSON JORDAN: Good. And a
21 Summary Order.

22 MR. MOY: Yes, thank you.

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1 CHAIRPERSON JORDAN: So what
2 we've, we've ordered a Summary Order not a full
3 blown order, so it takes about what? How long
4 would the Summary Order take, like two three
5 weeks?

6 MR. MOY: A few days.

7 CHAIRPERSON JORDAN: Could, two
8 few weeks or so to do the summaries?

9 MR. MOY: We can do it faster than
10 that.

11 CHAIRPERSON JORDAN: Okay, well
12 I'm just giving you some, and so you would have
13 the order, pick up the order, transmit it to the
14 DCRA and they'll run with it from there.

15 MR. HIRSCH: Okay, very good.
16 Well, thank you.

17 MR. GRANT: Thank you.

18 CHAIRPERSON JORDAN: Okay. Thank
19 you.

20 MR. HURST: Thank you.

21 CHAIRPERSON JORDAN: Let's do, I
22 think we're okay for 819.

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1 MR. MOY: Okay, the next
2 application before the Board is Application No.
3 18819 of Neighborhood Development Company.

4 This is a request for variance
5 relief from off-street parking under
6 subsection 2101.1, a special exception from
7 roof structures under 411.11 and 770.6.

8 And this is what has been
9 advertised, to allow a new 20 unit multifamily
10 residential building, Georgia Avenue, sir.

11 CHAIRPERSON JORDAN: I don't think
12 you need to get that comfortable. Please
13 identify yourselves.

14 MR. FREEMAN: Good morning, Chair.
15 And for the record, my name is Kyrus Freeman.
16 I'm a partner with the law firm of Holland &
17 Knight, and I'll just have our witnesses
18 introduce themselves.

19 CHAIRPERSON JORDAN: Yes.

20 MR. McKINNEY: Hi, my name is
21 Diarra McKinney. I'm with Neighborhood
22 Development Company.

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1 MR. WASHINGTON: Good morning,
2 Adrian Washington. I'm the President and CEO
3 of Neighborhood Development Company.

4 MR. GRANT: Good morning. I'm
5 Aubrey Grant with Emotive Architecture.

6 MS. WHITE: Good morning, Nicole
7 White with Symmetra Design.

8 MR. GIULIONI: Good morning.
9 Michael Giulioni with the Neighborhood
10 Development Company.

11 CHAIRPERSON JORDAN: Good, thank
12 you and welcome. I don't really, I think the
13 application -- well I've got a couple just quick
14 kind of housekeeping questions about this.

15 Didn't see it, do we have an ANC
16 letter? What's the status of ANC?

17 MR. FREEMAN: We don't have a
18 letter from the ANC, however we did get a letter
19 from the Chair of the ANC, who is also our SMD
20 Commissioner, and that was filed yesterday.

21 CHAIRPERSON JORDAN: Okay, but
22 not, they had not taken a full vote on the ANC?

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1 MR. FREEMAN: They have not
2 submitted a letter.

3 CHAIRPERSON JORDAN: But okay, all
4 right. And the other question I had was on
5 these conditions. I was kind of, didn't
6 understand. I just want to talk about some of
7 the conditions.

8 And that's, these are just my
9 questions, I don't know if the Board has any
10 other questions but, the applicant shall offer
11 an annual Bikeshare and car share membership
12 for the initial term of lease for new apartment
13 residents for the first five years.

14 The building is open or offered as,
15 or offering, annual Capital Bikeshare or car
16 share membership. Is that your understanding?

17 MR. FREEMAN: Yes, sir.

18 CHAIRPERSON JORDAN: Okay, and
19 then the second is that the applicant shall
20 provide a minimum of 10 long term bicycle
21 parking spaces.

22 And this is the part I

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1 don't quite understand. The applicant shall
2 also be expected to provide at least four short
3 term bicycle spaces during the public space
4 permitting process.

5 MR. FREEMAN: Those would be out,
6 the 10 would be in the building, and the four
7 would be outside the building.

8 CHAIRPERSON JORDAN: Okay, but
9 they're only needed during the time -- no one's
10 from DDOT, has --

11 MR. FREEMAN: I think what they're
12 saying is that as we go through the public space
13 permit process, we would have to work with DDOT
14 to locate and get their approval for the
15 installation of four bike racks in public
16 space.

17 CHAIRPERSON JORDAN: Okay, so it's
18 10 in and four out?

19 MR. FREEMAN: Yes.

20 CHAIRPERSON JORDAN: Regardless.
21 I got it.

22 MR. FREEMAN: Yes.

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1 CHAIRPERSON JORDAN: I'm, okay
2 that was the issue. I didn't know what they
3 were saying. Okay.

4 MR. FREEMAN: And we've committed
5 to each of those two conditions.

6 CHAIRPERSON JORDAN: Board do you
7 have any questions that we need to drill down
8 on?

9 MEMBER HINKLE: What's the
10 difference between the number of bicycle spaces
11 that's required versus what's being offered
12 under this condition?

13 MR. FREEMAN: It's all under zoning
14 -- under the building code it's one for every
15 three. So 20 divided by three is seven.

16 MEMBER HINKLE: Okay.

17 CHAIRPERSON JORDAN: Mr. Turnbull
18 did you have --

19 COMMISSIONER TURNBULL: Yes, Mr.
20 Chair, thank you.

21 I guess one of my questions is I'm
22 trying to see how well that this fits in and that

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1 -- I'm looking at a lot of these houses are
2 walk-ups, I mean they have a first floor that
3 you can walk up.

4 And we just wondered, did you look
5 at the possibility of having the three units on
6 Iowa on the first floor, as possible walk-ups?
7 Kind of match the street front, down the street.

8 MR. FREEMAN: We can go to a site
9 plan, but on Iowa there's a large public space
10 --

11 COMMISSIONER TURNBULL: Right.

12 MR. FREEMAN: -- that impacts our
13 site, that, and we have a slope condition. We
14 have a seller condition that, there's a zone on
15 closer to the Iowa --

16 COMMISSIONER TURNBULL: Oh, I saw
17 that but I'm just wondering if you had, in one
18 of your options had tried to go back and tried
19 to at least make it blend in more with the
20 neighborhood that way?

21 MR. GRANT: That's one of the
22 things that we were exploring. We're still in

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1 the concept of design phases, but that's one of
2 the options that we are exploring.

3 COMMISSIONER TURNBULL: So you
4 would come back then for a modification, or
5 you'd be changing or, what? I'm not sure I
6 understand.

7 MR. FREEMAN: The Iowa Avenue, our
8 building is actually set back from Iowa.

9 COMMISSIONER TURNBULL: I see
10 that.

11 MR. FREEMAN: So our front is
12 Georgia Avenue.

13 COMMISSIONER TURNBULL: Right.

14 MR. FREEMAN: And the rear along
15 Iowa we have the public space, and then the rear
16 land area which is our rear yard and also is the
17 area that we're using for our green area ratio
18 calculation.

19 So in order to do the walk-ups kind
20 of from Iowa that would -- we're not
21 anticipating having primary access to any of
22 the residential units from Iowa. The primary

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1 access would be from Georgia Avenue.

2 COMMISSIONER TURNBULL: Okay. On
3 the rooftop, you asked for a variance but OP has
4 not commented on the rooftop variance request,
5 I don't believe, on their report.

6 It's a little ungainly up there.
7 You have, it's not the most attractive rooftop
8 that we're looking at. Did you really try to,
9 an effort to try to make that look a little bit
10 more presentable?

11 MR. FREEMAN: So we asked for a
12 special exception, I had multiple roof
13 structures, on the roof.

14 COMMISSIONER TURNBULL: Right.

15 MR. FREEMAN: And OP did recommend
16 approval of that special exception relief.

17 COMMISSIONER TURNBULL: Did they?

18 CHAIRPERSON JORDAN: Yes.

19 COMMISSIONER TURNBULL: Okay.

20 MR. FREEMAN: So the relief is
21 because we, since we're having a deck, we had
22 multiple structures that are, in order to

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1 provide kind of egress for the folks on the
2 roof.

3 COMMISSIONER TURNBULL: There is a
4 deck up there?

5 MR. FREEMAN: Yes, sir.

6 COMMISSIONER TURNBULL: I didn't
7 see anything on the drawings. I just saw a roof
8 plan, showing that you can access the roof by
9 both stairwells?

10 MR. FREEMAN: Yes, on DS-10. I'm
11 not sure if you have the most recent drawings.

12 COMMISSIONER TURNBULL: I have
13 DS-10 and it's, I don't think there's a date on
14 it.

15 MR. FREEMAN: The hatch --

16 COMMISSIONER TURNBULL: Oh, it's
17 6-10-14.

18 MR. FREEMAN: Our August 22nd --

19 COMMISSIONER TURNBULL: I don't
20 have it.

21 MR. FREEMAN: -- 8-22-14 drawings
22 that were included B

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1 COMMISSIONER TURNBULL: I don't
2 have that one.

3 MR. FREEMAN: -- in our pre-hearing
4 submission?

5 We can, if you don't have it, we have
6 copies.

7 CHAIRPERSON JORDAN: Which exhibit
8 was this?

9 MR. FREEMAN: I don't have -- it's
10 our September 2nd, 2014 submission.

11 MR. MOY: Mr. Chairman, I believe
12 that's Exhibit 26C, C as in Charlie.

13 COMMISSIONER TURNBULL: Maybe I've
14 seen it and I just didn't -- well I have a
15 partial print of it I guess.

16 MR. FREEMAN: We can, let's, we
17 have a copy of the sheet here. We can pull it
18 up on the screen as well. A copy of our roof
19 plan.

20 COMMISSIONER TURNBULL: Is the
21 rest of the roof, is a white roof, sedum roof
22 or what? What are you, what kind of a roof is

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1 up on that for the, beyond the deck?

2 MR. GRANT: It's going to be a white
3 roof.

4 COMMISSIONER TURNBULL: White
5 roof. Lighting up there, low level lighting?

6 MR. GRANT: Yes.

7 (Simultaneous speaking)

8 MR. GRANT: -- exceptions for the
9 deck.

10 COMMISSIONER TURNBULL: All down
11 lighting?

12 MR. GRANT: Down lighting, down.

13 COMMISSIONER TURNBULL: Okay.

14 Mr. Chair, those are my questions. Thank you.

15 MEMBER HINKLE: So, I'm sorry, you
16 might have stated this, you're meeting the GAR
17 requirements from the rear yard. Is that
18 correct?

19 MR. FREEMAN: The rear yard, some
20 of the roof area as well as the other storm water
21 management. But we've done the calculation
22 and yes, we are meeting the requirement.

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1 MEMBER HINKLE: I don't see in the
2 plans any landscaping for what is the public
3 space along Georgia Avenue. What are the plans
4 for that?

5 MR. FREEMAN: As of now, we don't
6 have a landscaping plan for Georgia Avenue.
7 Georgia Avenue's pretty narrow. What we are
8 doing is setting our building back slightly.
9 And if you look at the first floor plan, which
10 is out of DS-04 or the --

11 MEMBER HINKLE: I'm sorry, let me,
12 I'm sorry, I misspoke, Iowa Avenue, and that
13 public space area that's currently concrete.

14 MR. FREEMAN: We're not proposing
15 any changes to that area on Iowa Avenue
16 currently.

17 MEMBER HINKLE: So essentially
18 people would still be able to park there. Is
19 that correct?

20 MR. FREEMAN: Well, I would imagine
21 what would happen, there's a fence around that,
22 so I'd imagine once the fence comes, DDOT would

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1 enforce the no parking prohibition in public
2 space.

3 MEMBER HINKLE: So you're asking
4 for parking relief and part of that request is
5 because you can=t access the site.

6 But the existing public space along
7 Iowa Avenue is concrete and is currently being
8 used for parking.

9 MR. FREEMAN: So that parking is,
10 NDC recently purchased the property so that
11 current parking in public space is not legal.
12 So once that use is changed, that parking in
13 public space goes away.

14 MEMBER HINKLE: Okay.

15 MR. FREEMAN: So that's not our
16 legal parking, that's why it's not supposed to
17 be there. If it were there and if we could rely
18 on it, our application would be very different.
19 But that's, parking there is not legal parking,
20 which is why we're here asking for the variance
21 relief.

22 MEMBER HINKLE: But aren't there

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1 driveways that go through public space to
2 access lots?

3 MR. FREEMAN: So we've met with
4 DDOT and we've kind of outlined in our
5 pre-hearing statement a number of, DDOT is not
6 comfortable with allowing us to have a driveway
7 through Iowa Avenue to access the rear of our
8 site, because it would take up such a large
9 portion of that public space.

10 MEMBER HINKLE: Okay. But what
11 I'm hearing now is that existing concrete space
12 is just going to remain concrete.

13 MR. GIULIONI: Well, through our
14 preliminary conversations with both OP and
15 DDOT, the plan is to return it to like a soft
16 scape. Consistent with DDOT's standards for
17 what is known as public parking. The area
18 between the sidewalk and the actual property
19 line.

20 So at this point we haven't actually
21 resolved what that treatment will be, but DDOT
22 has clearly indicated to us that they want it

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1 brought back in line with the condition that is
2 predominant along the entire street frontage.

3 So sort of to Commissioner
4 Turnbull's point, the intent is to mimic what
5 is to, I guess the northwest of the existing
6 lot. You know, we want to actually have it
7 transition the same way the rowhouses that are
8 next door, how they operate.

9 MEMBER HINKLE: Okay, thank you.

10 CHAIRPERSON JORDAN: Yes.

11 MEMBER HINKLE: Well I'm just
12 wondering if that should be a condition?

13 CHAIRPERSON JORDAN: That's the
14 whole -- but then the other issue is DDOT.

15 MEMBER HINKLE: Right.

16 CHAIRPERSON JORDAN: I think we
17 could continue to work with DDOT to provide the
18 landscaping requirements or treatment to that
19 spot as DDOT requests.

20 MEMBER HINKLE: Sure. I'm just
21 concerned because we're taking, you know
22 speaking about a parking variance and you know

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1 there's still this concrete area.

2 CHAIRPERSON JORDAN: Yes, well
3 let's move on and we can have the conversation
4 with planning and also we can decide if there's
5 something else. Any other questions we have
6 for this applicant?

7 (No audible response)

8 CHAIRPERSON JORDAN: Is there
9 anything that you think you need to present to
10 the Board?

11 MR. FREEMAN: No, Mr. Chairman.

12 CHAIRPERSON JORDAN: That was just
13 important that we drill down on those things
14 that the Board members were concerned about.
15 Then let's turn to the Office of Planning for
16 input, please. Thank you.

17 MR. MORDIN: Good morning. I'm
18 Stephen Mordin from the Office of Planning.
19 And Office of Planning continues to support
20 this application. I would like to point out
21 one error in the staff report.

22 And that's on the second page under

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1 subtitle IV. It indicates that there's a
2 requirement for a variance for roof structure
3 height, which is in error. There is no
4 requirement for roof structure height.

5 So that second to last item on the
6 chart, is an error.

7 CHAIRPERSON JORDAN: Okay, that's
8 good to know.

9 Board, any questions for planning?
10 Anyone? Questions for planning?

11 (No audible response)

12 CHAIRPERSON JORDAN: Does the
13 applicant have a question for planning?

14 MR. FREEMAN: No, Mr. Chairman.

15 CHAIRPERSON JORDAN: Okay, where
16 are we? Took my eye off the ball and forgot
17 where I was.

18 Is there any representative here
19 from the Department of Transportation?
20 Department of Transportation?

21 (No audible response)

22 CHAIRPERSON JORDAN: Mr. Moy

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1 again, would you encourage Department of
2 Transportation when they have conditions or
3 issues that we would beg that they have someone
4 here. It's just helpful to us to understand
5 where they are on some of these matters,
6 especially when they offer conditions.

7 But they submitted a letter with no
8 objections, and we just went over the
9 conditions which they proposed.

10 We discussed the ANC 4C. Is there
11 a representative here from ANC 4C?
12 Representative from ANC 4C?

13 (No audible response)

14 CHAIRPERSON JORDAN: We did
15 discuss the issue of not having the vote for ANC
16 4C, however you have the support of the
17 Chairperson and a single member, single
18 district person for that area.

19 Is there anyone here wishing to
20 speak in support of this application? Anyone
21 wish to speak in support?

22 (No audible response)

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1 CHAIRPERSON JORDAN: We do have a
2 support letter of Mr. Charles Ford, the
3 neighbor at, and it's Exhibit 24G.

4 Is there anyone wishing to speak in
5 opposition to this application? Anyone
6 wishing to speak in opposition?

7 (No audible response)

8 CHAIRPERSON JORDAN: Then we'll
9 return back to the applicant and if you, any
10 rebuttal or closing that you feel necessary.

11 MR. FREEMAN: Just one point, I
12 don't want to belabor it. We would be happy to
13 have a condition in our order that says the
14 public space adjacent to this site, on Iowa
15 Avenue, will be designed and meet DDOT
16 landscape and public space requirements.

17 We're more than happy to have that
18 as a condition of our order.

19 MEMBER HINKLE: Thank you, I --

20 MR. FREEMAN: If approved.

21 MEMBER HINKLE: I appreciate that.

22 CHAIRPERSON JORDAN: Okay, then we

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1 will close this hearing. Is the Board ready to
2 deliberate?

3 (No audible response)

4 CHAIRPERSON JORDAN: Okay, then I
5 would move that we grant the relief requested
6 with the conditions which have been outlined
7 earlier. And with the added condition, just
8 read the wording again, please? Mr. Freeman.

9 MR. FREEMAN: The public space
10 adjacent to the site on Iowa Avenue, will be
11 designed to meet DDOT landscape and public
12 space requirements.

13 CHAIRPERSON JORDAN: Okay. That
14 being the motion, Mr. Hinkle.

15 MEMBER HINKLE: Yes, I'll second
16 that. I appreciate that language simply
17 because it's not in the plans at this point.
18 But there's no sense in delaying this. So I
19 second the motion.

20 CHAIRPERSON JORDAN: Any further
21 discussions?

22 (No audible response)

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1 CHAIRPERSON JORDAN: Those in
2 support, aye.

3 (Chorus of ayes)

4 CHAIRPERSON JORDAN: Those
5 opposed, nay.

6 (No audible response)

7 CHAIRPERSON JORDAN: The motion
8 carries. Mr. Moy.

9 MR. MOY: The staff would record
10 the vote as 3-0, this on a motion of, 3-0 to
11 approve. This on a motion of Chairman Jordan
12 to approve the application for the relief
13 requested.

14 The variance for off-street parking
15 and special exception for the roof structures,
16 and therefore 11.11 and 770.6 with conditions.
17 Two conditions and the conditions just
18 proffered by the applicant giving three total
19 conditions.

20 As I said, seconding the motion, Mr.
21 Hinkle. Also in support Mr. Turnbull, and Mr.
22 Chairman, we have two members not present. The

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1 motion carries.

2 CHAIRPERSON JORDAN: Thank you,
3 and Summary Order please.

4 MR. MOY: Thank you, sir.

5 MR. FREEMAN: Thank you.

6 CHAIRPERSON JORDAN: Thank you.
7 Top of the batting order at 15, 815 please.

8 MR. MOY: The next application
9 before the Board for hearing is Application No.
10 18815 of Amanda Bennett and Donald Graham.

11 Mr. Chairman, this application is
12 in for multiple relief. Variances and, to FAR,
13 lot occupancy rear yard, nonconforming
14 structure. To allow rear deck.

15 CHAIRPERSON JORDAN: Okay.
16 Let's, please identify yourself.

17 MR. HAINS: My name is Jeffrey
18 Hains. I'm Hains Architects, I'm the
19 architect for the home owner.

20 MS. BENNETT: And I'm Amanda
21 Bennett, I'm the home owner.

22 CHAIRPERSON JORDAN: Okay, and

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1 thank you for coming. All right, it's for you
2 to go ahead and do a presentation. You have a
3 big lift in trying to prove to the Board or
4 showing to the Board as well as Office of
5 Planning that there is a exceptional situation
6 or condition in line with this property that
7 will allow you to have relief necessary for
8 zoning reliefs.

9 MR. HAINS: Thank you, Mr.
10 Chairman. The site, first of all the owner
11 wishes to maximize the use and enjoyment of the
12 site by building a deck.

13 The site is a standard size by
14 zoning. There's no harsh physical
15 characteristics about this site other than the
16 main level, the main floor level is seven feet
17 above grade.

18 Currently there is an existing
19 deck. It does meet current zoning regulations
20 but only utilizes about maybe twenty percent of
21 the area. So my client, home owner, simply
22 wishes to maximize the use and enjoyment.

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1 There are a number of other, in that
2 same neighborhood and alleyway, there are a
3 number of other decks and structures of similar
4 size and configuration. And we're simply
5 being consistent with those structures.

6 We further believe that the project
7 does not burden any other neighbor's enjoyment,
8 use of their property, light, air, and so forth.
9 There's no compromise.

10 I think it's an impractical, we talk
11 about an exceptional practical difficulty is
12 the wording in the analysis.

13 And currently they have to walk down
14 five steps from their main level, from the main
15 kitchen, dining room, living room level to get
16 to their current deck. And for elderly parents
17 and young children, that does present an issue
18 for the home owner.

19 What we're proposing is to raise the
20 deck to the level of the main floor level, which
21 will allow us to keep our parking space
22 underneath it. And to create a parameter

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1 screen, and thereby maintaining their privacy
2 but also privacy of adjoining neighbors.

3 Lastly, I would just point out that
4 Historic Preservation, ANC, and the adjoining
5 neighbors to which the home owner has reviewed
6 the plans with them, have all supported the
7 project.

8 So on the basis of that --

9 CHAIRPERSON JORDAN: Let me ask
10 you, I didn't see any letters of support. And
11 that was one of the questions I was going to ask.
12 Do we have letters of support?

13 MR. HAINS: I do have letters of
14 support here.

15 CHAIRPERSON JORDAN: Are they on
16 file? Do we, I don't believe we have them in
17 our file. So after our hearing we need, well
18 you have copies, sufficient copies for the
19 Board?

20 MR. HAINS: I can certainly make
21 copies and submit them. I have the originals.

22 CHAIRPERSON JORDAN: Let's

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1 continue and then we will work around that,
2 okay. How many letters of support do you have?

3 MR. HAINS: I have four.

4 CHAIRPERSON JORDAN: And from the
5 neighbors on both sides?

6 MR. HAINS: Yes. Sides, front and
7 back.

8 CHAIRPERSON JORDAN: Okay,
9 continue please.

10 MR. HAINS: So fundamentally we're
11 asking relief of the stated sections to build
12 this deck and screen.

13 CHAIRPERSON JORDAN: But this
14 property is similar to the properties on both
15 sides of it. Isn't that correct?

16 MR. HAINS: It's similar, yes.
17 With the exception on the east side, the
18 structure actually is built back to their,
19 practically to their property line. So they
20 have a larger lot coverage on the east side, or
21 occupancy, excuse me.

22 On the west side, the neighbor's

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1 house actually sits back from my client's
2 structure. And they, and it is separated by an
3 existing masonry wall.

4 And I think that's, if we go to
5 pictures on Sheet EX-2 and we look at picture
6 F, which is the lower left. We see my client's
7 structure on the right of that photo. And you
8 can see the setback of the adjacent neighbor's
9 house, is setback probably 10 to 15 feet.

10 And then picture G and J show the
11 relationship of the east neighbor whose house
12 extends beyond the back face of my client's
13 structure.

14 We also see on picture D, and A, B,
15 C, and D that the adjoining neighbor's
16 structure that's currently built, which is at
17 the same height or taller than our structure.

18 CHAIRPERSON JORDAN: Okay, yours
19 essentially will kind of mirror this to some
20 extent?

21 MR. HAINS: We're going mirror what
22 many of the structures there have already

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1 built. If we go to Sheet EX-1 we see several
2 more examples of decks built in the alleyway to
3 the east side of the property.

4 And you can see they're all raised.
5 They have surrounding parameter fences or
6 screens. They have parking underneath. Some
7 are partially enclosed, others are open at the
8 ground level.

9 So we feel that we are simply in
10 keeping with the architecture, alley, and
11 structures that are presently there.

12 And we also feel that this project
13 is in keeping with the intention of the zoning
14 regulations by providing convenience, order,
15 and property value, uplifting property values
16 and maintaining the character, in this case of
17 the alley architecture.

18 MS. BENNETT: Sir, may I speak?

19 CHAIRPERSON JORDAN: Yes,
20 certainly.

21 MS. BENNETT: The one thing I would
22 like to point out by looking at it, is that as

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1 far as I can see, we're the anomaly in that
2 neighborhood. Everything else is consistent.

3 And the reason the use and enjoyment
4 reason, is the only way you can put a car and
5 have a deck at the same time, is to raise it up
6 to street level.

7 And I don't know if I can swear to
8 this, but I'm pretty sure we're the only
9 structure that's at that lower level in that
10 whole entire alley back there.

11 CHAIRPERSON JORDAN: You mean
12 presently?

13 MS. BENNETT: Presently, yes.

14 CHAIRPERSON JORDAN: Without the
15 variance.

16 MS. BENNETT: Without the
17 variance. So every other structure back there
18 because of the logic of --

19 CHAIRPERSON JORDAN: Because they
20 have a deck.

21 MS. BENNETT: Yes, every other
22 structure that has a deck is at the higher level

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1 that we're looking to do. So we're just
2 looking to do, as far as I can tell, the thing
3 that we're the only ones that aren't doing right
4 now.

5 CHAIRPERSON JORDAN: Got you, I
6 understand. Okay is there anything else you
7 want to present to the -- Board any questions
8 we want to ask the applicant?

9 COMMISSIONER TURNBULL: Aren't
10 most of the homes in this area walk-up and you
11 have to go up half a story, I mean so that's not,
12 I mean you're talking about an exceptional
13 condition but that's standard for most of DC.

14 A lot of these rowhouses are, that's
15 part of what you buy when you buy the house.
16 You have to walk up half a floor. Am I correct?

17 MR. HAINS: You're correct from the
18 street level you do have to walk up half a level.
19 But in terms of a practical difficulty, to have
20 to go down out of your back, back of your house
21 to enjoy your deck, five steps.

22 It's one thing to go up to get into

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1 your house. You actually do enter, you
2 actually enter the foray at the lower level and
3 you actually go up inside the house to get to
4 the main level.

5 But once you're up at the main
6 level, I feel that there's a practical hardship
7 in having to carry food and beverage and just
8 to come out your back door and have to descend
9 five steps to the deck level to meet the code
10 if we were to build to the code, is a practical
11 difficulty.

12 COMMISSIONER TURNBULL: I think
13 your definition of a practical difficulty is a
14 little different than what the zoning
15 regulations would call a practical difficulty.

16 I think you're looking at a
17 convenience for an applicant, for an owner, but
18 that's part of the, as I said, that's part of
19 the building stock of DC.

20 So I, it's hard to actually say that
21 it's a practical difficulty when you buy a
22 dwelling unit such as this.

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1 CHAIRPERSON JORDAN: Isn't there a
2 sewer right behind?

3 MR. HIRSCH: There actually is a
4 kind of --

5 CHAIRPERSON JORDAN: Kind of a deep
6 sewer there?

7 MR. HIRSCH: It's on the property,
8 yes.

9 CHAIRPERSON JORDAN: The other
10 properties around you, do they have the same
11 sewer?

12 MR. HIRSCH: They do not, to my
13 knowledge.

14 CHAIRPERSON JORDAN: Okay. Board
15 any other questions?

16 (No audible response)

17 CHAIRPERSON JORDAN: Then if
18 there's nothing else we'll turn to the Office
19 of Planning for their input.

20 MR. JESICK: Thank you, Mr.
21 Chairman and members of the Board. My name is
22 Matt Jesick. We feel the applicant has

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1 designed a very attractive deck that would
2 certainly make their backyard more useable.

3 It would protect the privacy of
4 neighbors. It would not have undue impacts on
5 light and air, however, where we stumble in our
6 variance analysis is we can't get over that
7 first hurdle of what is unique or exceptional
8 about the property?

9 So while we sympathize with the
10 applicant unfortunately we cannot recommend
11 approval of the variance relief as requested.
12 I'd be happy to take any questions.

13 COMMISSIONER TURNBULL: How
14 prominent is the sewer behind the house?

15 MR. JESICK: What do you mean by
16 prominent, I mean?

17 COMMISSIONER TURNBULL:
18 Configurations, impact upon the property?

19 MR. JESICK: It exists now, I --

20 MR. HIRSCH: If I may --

21 CHAIRPERSON JORDAN: No, no, no
22 you --

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1 MR. JESICK: It exists now, in the
2 current configuration, I don't know if that
3 would have an impact on --

4 COMMISSIONER TURNBULL: I know,
5 I'm just throwing it out there, just trying to
6 look for some straws. Okay.

7 CHAIRPERSON JORDAN: Board, any
8 other questions you'd like to ask?

9 COMMISSIONER TURNBULL: No, I
10 always like to talk to Mr. Jesick. I think
11 you've hit something. I mean we're all
12 sympathetic to, I mean apparently there's been
13 a lot of other construction in this area, which
14 is probably un-permitted or not by code. I'm
15 not sure.

16 I'm not sure, I mean there's a lot
17 of these other decks that are back there. Do
18 you know much about, I mean --

19 MR. JESICK: I don't have a sense of
20 which decks have received Board relief in the
21 past. That's something we can research and
22 find out if you're interested.

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1 CHAIRPERSON JORDAN: That was, I'm
2 glad you, because that was something B

3 COMMISSIONER TURNBULL: It's
4 always a difficult question, I mean they're
5 going for 87 percent lot occupancy which to me
6 is a lot in this area too. I mean considering
7 that there's already others that are back here.

8 But I think part of the problem is
9 some of the reasons that I've heard, like you
10 said, don't really make the three prong test.
11 Especially that first prong.

12 Although we're sympathetic to it,
13 we see the issues, and from, being HPRB says
14 okay, but HPRB is not concerned about zoning.
15 They're appeared about appearances. So from
16 that standpoint, yes, from appearances it's an
17 attractive structure.

18 And considering what's there, it
19 probably won't have much of a impact but I'm
20 reluctant to give relief based upon the fact
21 that it's basically a personal request. It's
22 like a personal need, well we need, it'd be nice

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1 to have. It's nice to have this.

2 And unfortunately the zoning
3 regulations aren't based upon nice to have. So
4 I'd like to somehow help but I'm stretching
5 myself to give approval to this.

6 So I wish there was stronger
7 arguments from the applicant's standpoint as to
8 you know, what was really, what is unique about
9 this property that could give us the ability to
10 say, yes we can do this?

11 And I'm looking at that
12 neighborhood, I'm just as I say, a lot of it's
13 probably, might be illegal. I don't think they
14 may have had a building permit. I don't know
15 if any of them did, but it might be worthwhile
16 just to look.

17 I don't know if it's, if the members
18 of the Board want to carry that any further or
19 just --

20 CHAIRPERSON JORDAN: I think we,
21 well let's kind of wait to deliberations.

22 COMMISSIONER TURNBULL: Yes.

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1 CHAIRPERSON JORDAN: Because we
2 can kind of have that, but I don't know if
3 there's any other questions of Mr. Jesick?

4 (No audible response)

5 CHAIRPERSON JORDAN: Does the
6 applicant have any questions of Office of
7 Planning? For the Office of Planning
8 Representative?

9 (No audible response)

10 CHAIRPERSON JORDAN: All right
11 then, let's ANC, we do have a, any
12 representative from ANC 2B? Representative
13 from ANC 2B?

14 (No audible response)

15 CHAIRPERSON JORDAN: We do have a
16 letter of approval which we will give great
17 weight to, from ANC 2B.

18 Anyone from the Department of
19 Transportation?

20 (No audible response)

21 CHAIRPERSON JORDAN: We do have a
22 letter from Department of Transportation which

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1 certainly doesn't object to the relief.

2 Is anyone here wishing to speak in
3 support? Anyone here wishes to speak in
4 support?

5 (No audible response)

6 CHAIRPERSON JORDAN: Anyone in
7 opposition?

8 (No audible response)

9 CHAIRPERSON JORDAN: I do wish we
10 could have those letters. And while Mr. Moy
11 is, yes, let him take a look at these.

12 MR. MOY: Thanks.

13 CHAIRPERSON JORDAN: We can kind of
14 switch back and forth, kind of a form letter,
15 but at least they provided --

16 (Off the record comments)

17 CHAIRPERSON JORDAN: Let's, sure
18 and let the applicant see if there's anything
19 you want to add in rebuttal or closing on this?

20 MR. HAINS: Again, I appeal to the
21 mission and the goals of the zoning regulations
22 which as stated are "provisions of zoning shall

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1 be held to the minimum requirements adopted for
2 the promotion of public health, safety, morals,
3 convenience, order, prosperity, and general
4 welfare" and goes on to say "provide adequate
5 light and air, prevent undue concentration of
6 population and the overcrowding of land" et
7 cetera.

8 Perhaps this is not a property that
9 doesn't have a physical hardship, but at the
10 same time, we do meet analysis number three
11 which is, we are not inhibiting anybody's
12 enjoyment, light and air. It is contributing
13 to the value of the neighborhood.

14 And then finally the homeowner's
15 right to enjoy their property. And I would ask
16 the Board to consider those values in their
17 decision making.

18 MS. BENNETT: And Mr. Jordan, would
19 you consider, I hadn't thought about this until
20 you brought it up, but the fact that it's so low
21 and so close to the sewer that's right
22 underneath it.

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1 Is that possibly when you're
2 talking about cooking, about the cooking and
3 people playing out there, that you'd be raising
4 it up higher to make it a greater distance from
5 a current existing sewer?

6 CHAIRPERSON JORDAN: I was
7 stretching trying to find something. And I
8 think this, you know, that's why I saw the
9 pictures, talked about the sewer being
10 different. I didn't see that in the other
11 places.

12 But we just have to talk about it and
13 see where we are. Is there anything else that
14 you guys would -- we appreciate you coming. Is
15 there anything else you have?

16 MR. HAINS: I do not.

17 CHAIRPERSON JORDAN: Okay. Then
18 let's close the hearing on the record based upon
19 what we have so far. Is the Board ready to
20 deliberate?

21 Yes, here's one that you know, the
22 issue that you may be, that the applicant may

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1 be seeing as Mr. Turnbull has said, there may
2 be illegal decks around you, which we simply
3 just don't have.

4 I think there is from the testimony,
5 from the pictures, et cetera, I believe that the
6 sewer could lead to a difference in how that
7 back yard is used. Stopping up the sewer, the
8 whole shebang, yes, I'm stretching, may allow
9 for some relief.

10 But then we have, Mr. Turnbull, we
11 do have a fail-safe for situations like this.
12 You know, it's like baseball, the pitch is like
13 real close and the catcher grabs the ball and
14 he pulls it across the plate just a little bit.

15 And this might be one. And this is
16 just my thought. I don't know where other
17 Board members are, but I think Gilmartin, we
18 certainly look at relief being diminimous to
19 some extent.

20 And we have some outs in that
21 regard, to saying that you know, weighing the
22 overall burden, the strict requirements of

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1 this, there is a need for the use right off the
2 main floor.

3 A stretch to talk about the sewer,
4 providing an exceptional situation or
5 condition to this property, but I realize it's
6 a stretch, but that's just some of my initial
7 thought for others to weigh in.

8 MEMBER HINKLE: Well there is an
9 existing document and so if you're speaking
10 about the diminimous impact, you know, I do see
11 that.

12 Well what's being proposed is
13 significantly larger than what's there, but
14 it's not as if this is a new deck going in.

15 CHAIRPERSON JORDAN: And compared
16 to the others.

17 MEMBER HINKLE: Correct and
18 compared to the others it's certainly, as
19 evidenced in the photographs, it's very similar
20 to what's been occurring in that block.

21 CHAIRPERSON JORDAN: Mr. Turnbull,
22 what do you want to do?

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1 COMMISSIONER TURNBULL: Well, let
2 me play bad cop and maybe a little bit of good
3 cop here.

4 First of all I, when we do the three
5 prong test probably the easiest prong to meet
6 is number three, I mean that's the easiest prong
7 for most people to meet.

8 One and two, one especially is the
9 stickler. That's the one that really, you get
10 by that, you're probably on your way to getting
11 the variance.

12 I don't want to kill this, but I
13 think that the applicant, and what I would be
14 open to is having the applicant come back with
15 a little bit stronger case.

16 Maybe give us some information on
17 the sewer, give us some more input as to meeting
18 this first prong somehow physically.

19 Give us something a little bit more
20 tangible that we can at least say, well you're
21 not quite there but it's enough to put you over
22 maybe most of the hurdle.

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1 I think maybe meet with the Office
2 of Planning and talk about this site, talk about
3 some of the fit conditions in here and then come
4 back to us with maybe a little bit different
5 presentation, where you really hit home and try
6 to get this first prong.

7 I'm a stickler because zoning, the
8 zoning regulations I looked at the Office of
9 Planning and that they have, usually they're
10 right on in some of these things.

11 But noticing the situation of the
12 area, it's, we run into this where there are
13 existing things that have been built. They're
14 probably unregulated. They've probably been
15 there for years and somebody --

16 But so anyways, that's why I don't
17 want to get too wordy, but I just think I'd give
18 them the option of coming back, going back
19 looking at this again and trying to really hit
20 home with the first prong.

21 CHAIRPERSON JORDAN: Okay, I can
22 certainly accept that. And for a stronger

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1 argument built around the backyard, its
2 difference. How the effect of the sewer
3 affects the property, your ability to expand
4 back there.

5 So let's do this --

6 COMMISSIONER TURNBULL:
7 Architecturally we find, we have, I have no
8 issue with it. I mean I think, you know from,
9 you got letters that saying from your
10 neighbors, so that's not the issue. The third
11 prong is not the issue.

12 It's that first prong. We've
13 really got to try to give us, give the Board
14 some, something, some more meat to chew on here.

15 CHAIRPERSON JORDAN: Yes, we don't
16 want to kill it. We want to get there but we
17 are bound by what the law requires and so that's
18 what we're trying to give you a lift there.
19 Give you another chance to do that.

20 So Mr. Moy, what would be --
21 additionally we need some information, if you
22 can check the land records yourselves to find

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1 out whether or not these other decks had proper
2 permission to be there.

3 Mr. Moy, what would be --

4 MR. MOY: If the applicant can
5 appear with supplemental information in a
6 week's time, staff would recommend that the
7 Board rehear this in decision or hearing on
8 September 30th.

9 CHAIRPERSON JORDAN: Yes, they may
10 not have enough time to really work this.

11 MR. MOY: Okay.

12 CHAIRPERSON JORDAN: You can go
13 another date. They're not pressing for it, they
14 want to get it done, but we want make sure they
15 have sufficient time to work this.

16 MR. MOY: Okay, let's set a date
17 then for October the, well the, I was going to
18 say October the 21st. If you feel that's too
19 long, then --

20 CHAIRPERSON JORDAN: Will that
21 give you ample time?

22 MR. HAINS: That's certainly give

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1 us ample time.

2 CHAIRPERSON JORDAN: Okay, let's
3 do that and so we'll continue this. Let's keep
4 the hearing open, not for decision. Let's keep
5 it open just in case we have questions. Okay?

6 Good. Thank you. We'll try and
7 get you there, but you know, we need some help
8 from you.

9 MR. HAINS: We appreciate it.
10 Thank you.

11 CHAIRPERSON JORDAN: Thank you
12 all. Oh, we're going take five minutes and
13 then we'll move into our last case on the
14 docket. Am I correct? Or am I ahead of
15 myself?

16 MR. MOY: That's correct, sir.

17 CHAIRPERSON JORDAN: Then 18794,
18 thanks.

19 (Whereupon, the above-entitled
20 matter went off the record at 10:37 a.m. and
21 resumed at 10:44 a.m.)

22 CHAIRPERSON JORDAN: All right,

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1 we're back in session. Mr. Moy, you want to
2 call 18794, please?

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

4 This is Application No. 18794 of
5 Newton Street, Development Three, LLC. Mr.
6 Chairman, this is a request for multiple
7 variance relief at property 1740 New Jersey
8 Avenue, N.W., and I believe there are revised
9 plans under Exhibit 30A.

10 This was last heard, I believe July
11 15th. No, it was postponed from July 15th,
12 rescheduled to today.

13 CHAIRPERSON JORDAN: All right,
14 thank you. Please identify yourselves.

15 MR. MOLDENHAUER: Good morning.
16 My name is Meredith Moldenhauer from the law
17 office of Griffin, Murphy, Moldenhauer &
18 Wiggins. Here with me today are
19 representatives of the applicant. To my right
20 is David Bloom, the architect of the project.
21 To my left is Jimmy Edgerton, and to his left
22 is Nick Hodges.

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1 I'll just start out with a brief
2 summary of what has changed from the initial
3 application and then I'll turn it over to my
4 clients and go through a presentation.

5 The application has been modified
6 to reduce the degree of lot area relief
7 requested, reducing the number of units.
8 We've also handed out a copy of the revised
9 penthouse design which modified the penthouse,
10 reducing it in size and visual appearance based
11 on back and forth discussions with the ANC.

12 We're also requesting
13 non-conforming structure relief and parking
14 relief. The documents submitted, including
15 the supplemental application, the pre-hearing
16 statement, we believe outline and demonstrate
17 in great detail, including financial analysis,
18 as to how the applicant satisfies the three
19 prong use variance test, or area variance
20 tests.

21 The applicant has gone to great
22 depths to work with the neighborhood and the

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1 concerns of the ANC. And has, is very excited
2 to be able to report that they have gotten the
3 support of the ANC which is part of the record.

4 They have, they had originally as
5 Mr. Moy indicated, postponed the case to allow
6 for additional dialog. At which time, they
7 reduced the number of units and provided an
8 extensive degrees of parking mitigation
9 measures which include RPP for the entire
10 building.

11 And also a first, I believe, time
12 the Board has ever seen this, but a restriction
13 on the VPP as well. Visitor parking permits,
14 which the District has acknowledged will become
15 formally effective as of January. Anybody can
16 obtain a VPP, so the applicant has agreed to
17 restrict those as well for the entire building.

18 We acknowledge Office of Planning's
19 position but will identify kind of our belief,
20 they kind of lacked response in regards to the
21 financial hardship that we will be able to walk
22 through and ask, answer any questions that the

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1 Board may have answers to.

2 At this point in time, I'll turn the
3 presentation over to Jimmy Edgerton to give a
4 brief introduction and then walk through the
5 plans.

6 MR. EDGERTON: Good morning. My
7 name is Jimmy Edgerton. I'll quickly
8 introduce the development team. Both Dave
9 Bloom, the architect with DB Architecture and
10 myself, Newton Street Development, we live in
11 DC.

12 Nick Hodges, all three of us, we all
13 work in the city. We intend to be a part of the
14 community and we're very excited to propose
15 this adaptive reuse project near public
16 transportation.

17 We've only done one project, one
18 project every year or two, and I've done other
19 projects before but I've never come in front of
20 the Board for relief.

21 Dave, you want to say a moment? I'm
22 sorry this is Dave Bloom the architecture, and

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1 Nick Hodges with BJC Contracting. This is a
2 map that shows we're in the R4 zone, which is
3 the reason we're here today. We are across the
4 street from a large C-2A zone.

5 This picture is looking southwest
6 from the post office and you can see that we're
7 on the edge of a commercial zone and there are
8 two gas stations south of the property.

9 This slide shows a couple pictures
10 of the existing conditions when we first saw the
11 inside of the property. It had been vacant for
12 five to eight years. It had been neglected for
13 many years. There were problems with
14 vagrants, cleanliness, crime and safety.

15 There were also numerous title
16 issues surrounding the property. It was a
17 unique situation from the owners. There were
18 communication issues. We worked into the
19 process confirming heirs, heirs, and interest
20 percentage. There were divorces and
21 remarriages involved.

22 It created an elongated contract

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1 period. There was also a double short sale
2 with lean positions that had been subordinated
3 in conflict, and one bank had been bankrupt and
4 the other had been sold.

5 Additionally inside the interior,
6 there was roof damage. There was some mold.
7 When I first saw the basement, there was
8 standing water that was up to the redline, if
9 you look at the bottom left slide. It was up
10 to my knee if I had walked into the basement.
11 Overall this has created a base sum to renovate
12 the property as a heavy lift.

13 MR. BLOOM: Okay, as my partner
14 mentioned, my name is Dave Bloom, I'm a partner
15 and the architect on the project, and I'll
16 quickly go through the plans that we have
17 developed so far.

18 What you see in front of you now is
19 the site plan and the typical floor plan. The
20 building, it's a very prominent building as you
21 come down Rhode Island, and you get to this part
22 of town, this is the building that's kind of

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1 right in your face.

2 It fronts on three streets, Rhode
3 Island, New Jersey, and S Street. The orange
4 area is both the building and essentially the
5 lot. It's 100 percent lot occupancy with a
6 small closed court on the west side. And then
7 all the area around it is the public parking
8 space. So it's not technically our property.

9 The makeup of the building is four
10 one bedroom units, three two bedroom units. We
11 have storage space in the cellar, which will
12 also provide secure bike parking. Seven
13 spots, one for each unit.

14 There are three existing entrances
15 into the building. We're maintaining all
16 three of those, so each street, Rhode Island,
17 New Jersey, S Street, each had essentially its
18 own entrance into the property.

19 What you see in front of you are the
20 proposed renderings of the building. It is
21 right now an existing two story structure with
22 a basement. And we are proposing to add a third

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1 story.

2 Even though this is not a building
3 that's in an historic district, we're very
4 sensitive to the neighborhood. That it is a
5 neighborhood with a lot of old wonderful
6 building stock and our proposed design is very
7 sensitive to that.

8 We are extending what is the attic
9 mansard roof, extending that along the existing
10 angle to turn that into the third story. And
11 we are essentially just elongating the existing
12 windows, the dormer windows to provide the
13 windows in the, into those units that would be
14 on the third floor.

15 You can also see in this rendering
16 the revised penthouse. In working with the ANC
17 we've reduced the size of it. There used to be
18 a mechanical room up there as well as a
19 community space. And those have now been
20 essentially removed.

21 The mechanical room is now in the
22 basement. We have a small closet up there for

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1 the use of the community but that's about it.
2 There is a roof deck.

3 We have also extended the mansard
4 roof at even a steeper angle to hide the
5 guardrail for that roof deck, so it really does
6 look like it's always been there. And that's
7 what our intent has been.

8 This is just a quick map showing its
9 proximity to public transportation. This is a
10 very public transportation oriented
11 development. That's sort of our niche with
12 this one.

13 Rhode Island has many bus routes.
14 It's just a few blocks from the Shaw Metro,
15 Bikeshare is a block away. It has a very high
16 walkability score. I think it was 96 out of
17 100. So we're really targeting this
18 development towards people who don't have cars
19 or see the need to have a car.

20 There is an existing drive-thru on
21 the space that is located in the public space,
22 or the parking space. In talking with DDOT

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1 about that, we're actually going to remove
2 that. And that creates additional community
3 parking spaces on the street on the Rhode Island
4 side.

5 By removing that drive-thru we
6 obtain one full parking space. So the diagram
7 on the left, the upper one shows the existing
8 condition with two cars. Of course the cars
9 continue parking down Rhode Island. And then
10 the lower diagram shows that added one space.

11 On S Street we don't pick up a full
12 space but we pick up about half a space. And
13 then given the overall length of parking
14 available until you get to our neighbors curb
15 cut, you can fit three compact cars there.
16 Right now, you can only fit two standard cars.

17 Just to quickly go over the rest of
18 our transportation demand mitigation strategy,
19 we have reduced the number of units. We
20 started off with eight, we're now in talking
21 with the ANC, we've reduced that down to seven.

22 As Meredith mentioned, this is full

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1 restriction on all residential parking passes,
2 visitor parking passes. I just mentioned the
3 additional on street parking that's created by
4 the removal of the drive-thru. We have the
5 secured bicycle parking for the tenants or the
6 owners in the basement and the off-street
7 parking.

8 MR. EDGERTON: Developing any
9 project that fully complies with all zoning
10 requirements would not be economically
11 feasible. The investment required is
12 substantial due to the existing condition of
13 the property.

14 Profit and loss submitted to the
15 Board shows the infeasibility of the
16 alternatives. Compliance with lot, area
17 requirement, would result in a practical
18 difficulty.

19 We presented to the ANC
20 subcommittee on zoning on May 29th, June 26th,
21 and August 27th and received a recommendation
22 of support on August 27th. On September 3rd,

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1 the ANC voted to support the application.

2 David and myself have walked the
3 neighborhood many times talking in depth to
4 neighbors, discussing the plans, receiving
5 feedback.

6 I had previously have lived in the
7 neighborhood and we walked the streets
8 ourselves, and really went out to meet our
9 neighbors again, and get to know what their
10 concerns were, and what they would like to see
11 in this project. We received 18 letters of
12 support including the only adjacent neighbor.

13 Repairing the dilapidated existing
14 structure at this prominent corner would be a
15 benefit to the neighborhood. Paying careful
16 attention to historic details is something that
17 we're very sensitive to.

18 Keeping the structure productive
19 and back to its, existing or original
20 residential use, we believe we do have a
21 transportation demand management plan. And
22 that adding the parking spaces along Rhode

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1 Island up and S Street N.W. do provide a
2 benefit.

3 MR. MOLDENHAUER: Thank you. As
4 indicated we're looking for three different
5 areas of relief. The lot occupancy relief
6 stems directly from the challenge in regards to
7 the existing condition of the property, the
8 financial and practical difficulty that arises
9 from renovating a property that is, you've
10 heard on the record, has been long vacant and
11 dilapidated.

12 Any individual buyer you know, if
13 they were looking at purchasing this property
14 would not most likely have gone through what Mr.
15 Edgerton described as an over a year long
16 process to actually close the property and get
17 through all of the title hurdles, and all of the
18 multiple short sales situations that have
19 occurred at the site, which did create a unique
20 history in order to get title.

21 And the challenge of, and someone
22 pursuing and taking the time and effort that is

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1 required to bring this property back to a more
2 attractive, you know useful aspect.

3 The applicant has met with
4 neighbors and currently a majority of the
5 community is very eager to see the property no
6 longer be as indicated, a location for vagrants
7 and things of that effect. Would rather have
8 it be restored to a more attractive
9 contributing part of the property.

10 Parking as indicated because of the
11 100 percent lot occupancy footprint and not
12 having an existing curb cut on the site, is not
13 obviously possible based on those factors.

14 And because of the request for the
15 additional number of units, the applicant has
16 identified multiple degrees of traffic demand
17 management that believe address those
18 concerns.

19 And that was a large discussion
20 point at the ANC, and at the end of the day as
21 indicated, the ANC did vote to support that
22 application.

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1 The degree of relief that we are
2 requesting, we believe kind of providing some
3 other examples of cases that have been
4 supported and presented to this Board and
5 received approval, is in line with those other
6 cases in regards to the number, the degree of
7 lot occupancy relief, adhere, especially by
8 reducing the number of units.

9 We believe that, that provides more
10 of a inline comparison to other cases that have
11 been supported by the Board and have satisfied
12 the standards, the three prong standard for the
13 Board.

14 I think that at this point I'll open
15 it up to any Board questions and be able to --

16 CHAIRPERSON JORDAN: Let's go back
17 to the first prong of the test which I think
18 we're all having difficulties with, and OP has
19 indicated. Would you elaborate on how you
20 believe you meet the first prong of the test?

21 MR. MOLDENHAUER: It's a
22 complements of factors. It's one, the fact

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1 that the property is an existing 100 percent lot
2 occupancy, so there's no, obviously no room for
3 providing parking.

4 It's also a question that there's
5 existing three entrances, so the challenge and
6 I can have Dave speak just a little bit more of
7 the challenge of obviously laying out and
8 constructing a building or a unit design with
9 three doors that obviously enter onto the
10 premises creates a challenge.

11 And if Dave, if you can elaborate a
12 little bit on the existing, how you're trying
13 to reduce the degree of renovation and the
14 existing opening stairwell and aspects of that
15 degree about the layout?

16 CHAIRPERSON JORDAN: And so I have
17 what you've outlined is the 100 percent lot
18 occupancy, and then the three entryways to the
19 building?

20 MR. MOLDENHAUER: Sir, I haven't
21 finished yet, but I was going to have going to
22 have, I'll go through all them. So it's a

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1 complements of factors of 100 percent lot
2 occupancy, of existing three entryways, the
3 fact that the property does front on three
4 streets, and is on the corner of a commercial
5 zone.

6 So this is actually on a very large,
7 if you look at our original -- let's see here,
8 I'm going the wrong direction, I'm sorry. If
9 you look at the zoning map, if you look up here,
10 if I can get my cursor -- this is all C-2A.

11 And it's not on the corner of a kind
12 of a small C-2A zone, it's actually on the
13 corner of a very large C-2A zone. And so in
14 regards to marketability it's a very unique
15 site because it corners on all three.

16 And you're looking directly across
17 the street to, into two large gas stations which
18 you know are in regards to marketing the
19 property and creating a unique situation for
20 you know, other uses especially in regards to
21 a six unit or six bedroom home. It creates a
22 practical difficulty in regards to marketing

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1 that.

2 And then the last practical, the
3 last unique circumstance is the physical
4 condition of the property. The property had
5 extenuating and dilapidated conditions.

6 The roof was falling in, the
7 basement, and we can have both Dave and Nick
8 testify and provide some more background about
9 the base level of construction that was
10 required to remedy the existing condition of
11 the flooded basement, the mold that was
12 incurred. It was created because of the flood
13 since the property had been vacant for so long.

14 And the roof obviously caving in
15 creating more problems. You can see in these
16 pictures the roof was caving in on multiple
17 areas of the floor. So all of those created a
18 base level of construction cost which would
19 then create the practical difficulty
20 associated with the relief.

21 That's a summation of the areas for
22 the complements of factors, and I'd like to have

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1 both Dave testify a little more from an
2 architectural perspective on that, and then
3 Nick address some of the construction aspects.

4 (Off the record comment)

5 MR. BLOOM: So even though the
6 interior of the building is quite dilapidated,
7 the framing for the floors was actually in
8 remarkably good shape and so we are proposing
9 to keep that framing pretty much 100 percent of
10 it. Maybe we'll have to remove a little bit of
11 it.

12 But what that means is that the real
13 main entrance to the building is on New Jersey,
14 which is this one right here. And as you go
15 through those doors you come to a very nice set
16 of stairs that take you up to the upper levels.

17 So we are proposing to maintain the
18 stair opening. We have to replace the stairs
19 for code reasons to bring them up to code to make
20 them code compliant. But that existing stair
21 opening really sort of sets the stage to
22 naturally divide the floor plan into a unit on

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1 the left side and a unit on the right side.

2 Additionally what that provides us
3 is on the first floor those two units would each
4 have a private entrance which we find would be
5 a marketing bonus. And then the main entrance
6 on New Jersey would take you to the upper levels
7 where there would also be units on either side
8 for a total of six. And then one in the
9 basement makes seven.

10 MR. MOLDENHAUER: And Nick if you
11 can just talk about the conditions of the
12 property that would then lead to additional
13 costs. That no matter how many or what degree
14 of relief we're requesting, the overall cost
15 that would be associated with bringing this
16 property back to any type of use, habitable use.

17 MR. HODGES: When we acquired the
18 property, as Jimmy shared with you, there was
19 a large amount of water that had built up in the
20 basement. The building was taking on water
21 from numerous areas. One of the areas was
22 downspouts, gutters, they were all clogged,

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1 falling off the building. We were getting a
2 lot of water in from those areas.

3 Another would be a prior garage door
4 opening that was in the basement foundation
5 wall. And then the ramp, the concrete ramp
6 that used to go down to that, was still
7 underground and covered up with dirt. We were
8 taking in massive amounts of water in there.

9 The site conditions in regard to the
10 grating, you know the grating was pushing up,
11 opposite direction grating into the house, the
12 foundation level. The current slab was
13 sitting on top of nothing but just solid
14 clay-type dirt. So it wasn't filtrating in any
15 way.

16 We've gone in and we had to do test
17 pits immediately to help relieve some of that
18 pressure. We've had Geotech take a look at the
19 project and determine that we need to do
20 extensive underpinning and filtering systems.

21 Most likely have to remove large
22 portions of the slab or all of it. Completely

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1 do drainage systems underneath and within the
2 building, around the outside, and on the
3 inside.

4 So to date, we've already invested
5 substantial amounts of money. In excess of
6 \$75,000 to just start mitigating the problem.
7 And we know we have more to come to make this
8 successful, to have a properly operating
9 structure. But and structurally support the
10 additional work we're going to do. But to also
11 just simply keep water out of the building.

12 MR. MOLDENHAUER: And would those
13 costs be required whether you did four units,
14 or six units, or seven units?

15 MR. HODGES: Yes, they would be.
16 To have any type of occupancy into this
17 building, due to the amount of water and
18 humidity that was building up in the basement,
19 and potential you know, future mold, and we
20 already mitigated what was there to date.

21 Yes, we would need this regardless
22 of any type of, or quantity of occupancy in the

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1 building.

2 CHAIRPERSON JORDAN: Board any
3 questions, additional questions of the
4 applicant? Yes, Mr. Turnbull.

5 COMMISSIONER TURNBULL: Yes, thank
6 you Mr. Chair.

7 You've mentioned a lot about
8 talking with the ANC and walking the
9 neighborhood. Have you had any further
10 meetings with OP regarding these changes and
11 talking about it?

12 Because the last OP report is dated
13 August 29th and I'm just wondering have you had
14 any further discussions with Ms. Thomas about
15 any of these changes?

16 MR. MOLDENHAUER: We made a lot of
17 these changes right around the September 3rd
18 ANC meeting which was I believe the same date
19 that our pre-hearing statement was due.

20 And so we provided a copy to Ms.
21 Thomas but we haven't had -- I actually ran into
22 Ms. Thomas the other day and we had a very short

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1 discussion outside of actually this hearing
2 room about two weeks ago.

3 COMMISSIONER TURNBULL: I guess
4 part of my concern is the OP report is based upon
5 an eight unit dwelling. The stuff we just got
6 over the transom, is for a six unit.

7 MR. MOLDENHAUER: Seven, the
8 pre-hearing --

9 COMMISSIONER TURNBULL: Is it
10 seven?

11 MR. MOLDENHAUER: The pre-hearing
12 statement included seven units. And the ANC
13 voted on a seven unit project.

14 COMMISSIONER TURNBULL: So, I got
15 the eight unit --

16 MR. MOLDENHAUER: The unit in the
17 basement --

18 COMMISSIONER TURNBULL: Okay.
19 Well I guess there has to be further discussion
20 with OP. Did you ever talk about, I mean I
21 guess my biggest -- why would you buy a property
22 like this knowing the zone and the

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1 restrictions?

2 MR. MOLDENHAUER: Well, and I
3 believe it, you know reverts to multiple cases
4 that self-created hardship is not a factor.

5 In you know, the preservation for
6 a 1700 block of N Street, they determined that
7 it you know, in that case where the YMCA bought
8 a property that they know would have had
9 difficulty putting a swimming pool into the
10 basement along with providing parking, and that
11 for a area variance, self-created hardship
12 cannot be considered a factor. And I think
13 that you know this was something where that
14 should apply here as well.

15 CHAIRPERSON JORDAN: Yes, but
16 we've also had cases where deteriorating
17 conditions of property where people have tried
18 to use that as a reason basis for uniqueness and
19 support, we've accepted it and we've rejected
20 it.

21 So I mean, it's the same kind of
22 discussion Mr. Turnbull is having. Not

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1 necessarily using the term, its self-imposed
2 hardship, but using the conditions of the
3 building as being what you inherited when you
4 got it, as basis to support among other things,
5 uniqueness. That's kind of where I believe Mr.
6 Turnbull --

7 COMMISSIONER TURNBULL: Right --

8 MR. MOLDENHAUER: Well, let me --

9 COMMISSIONER TURNBULL: And I
10 guess part of the other thing is I mean you talk
11 about all these problems with the basement, the
12 water proofing, the leaking. You're in a flood
13 zone as I understand. You're in a FEMA flood
14 zone?

15 MR. MOLDENHAUER: Let me allow Mr.
16 Edgerton to address that question. I think
17 that some of the facts may be helpful, or is it
18 Dave?

19 MR. EDGERTON: I can do it. Mr.
20 Turnbull, I'm sorry, I didn't, can you repeat
21 your question?

22 COMMISSIONER TURNBULL: Well I'm

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1 just saying, I mean, as I understand it you had
2 a lot of problems with the water, the basement,
3 the flooding, and as I understand you're in a
4 FEMA flood zone? So, but you're still going to
5 come back with basement dwelling units?

6 MR. EDGERTON: We have reduced the
7 initial, the proposal was for two basement
8 dwellings units, not it's only one. And that
9 reduces the cost of our only really fully
10 mitigating one of the units for habitable
11 space.

12 And if I may speak upon the
13 hardship. There was, we had not been able to
14 get into the property often before purchasing.
15 So we were not aware of some of the interior
16 issues in the basement.

17 None of the test pits or
18 geo-technical study that we, could be
19 accomplished until after that closing. But
20 these, some of these were unknown before we had
21 actually purchased the property.

22 COMMISSIONER TURNBULL: Well I

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1 guess I'm still struggling with the first
2 prong, getting over that hump for the relief
3 requested. And I don't know whether I need
4 more information, or you've got a backup to
5 that.

6 I guess I need something else that's
7 really going to show me that you're satisfying
8 the first prong. And maybe OP, we can get into
9 that with OP. But I mean OP's original, you
10 know, the 900 square foot -- I don't know what
11 you're at right now.

12 I mean, you've given us this whole
13 new stuff. I don't know if anything changes,
14 or I mean you've tried to come in and say oh,
15 we've made changes. We've done this, but I
16 don't know what that does for me to help get over
17 that first prong.

18 MR. EDGERTON: Mr. Turnbull if I
19 may, the exterior of the property has not
20 changed much at all from the eight unit to the
21 seven unit proposal. That OP previously
22 looked at, other than the reduction in the

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1 penthouse.

2 COMMISSIONER TURNBULL: Yes, and
3 the, doesn't look that great either still. I
4 mean it looks like it's just tacked on, sloped,
5 and I mean I'm not that excited by it
6 architecturally. That it's trying to, in
7 keeping the character of the house, it just, it
8 looks rather bland and plain and just bumped on.

9 MR. EDGERTON: I agree with the
10 bland and plain. We were trying to take into
11 account comments from the ANC and the community
12 about trying to make it go away as best as
13 possible. And have it not be visually seen.

14 COMMISSIONER TURNBULL: I think it
15 stands out more, I think it looks worse. I mean
16 I don't know, but that's just this one Board
17 member's feelings.

18 MR. EDGERTON: Understood. If I
19 may I have one more thing about the property.
20 One of the reasons I was drawn to it is I used
21 to, I lived a block away and I would walk down
22 New Jersey Ave., one of the grand avenues and

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1 then take a left down Rhode Island Ave., to get
2 to the Metro.

3 And there's not often that is a
4 property on the corner of these two grand
5 avenues that is not in a much more denser or
6 larger area.

7 And some of the setbacks and the
8 public parking from New Jersey Ave., and also
9 Rhode Island Ave., have created some of the
10 difficulties in trying to make this project
11 become feasible and turn it around into a place
12 that can be lived in again.

13 But being on the corner of those two
14 grand avenues is something that initially drew
15 me to the property. Not knowing some of these
16 further items lurking in the basement and the
17 roof.

18 COMMISSIONER TURNBULL: Okay.

19 CHAIRPERSON JORDAN: The square
20 footage of the units here, is it still going to
21 be 240? Is that what I understand, square
22 footage?

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1 MR. BLOOM: The square foot per --

2 CHAIRPERSON JORDAN: Per unit?

3 (Off the record comment)

4 MR. BLOOM: Unit size, the one
5 bedrooms are about 550 to 560 square feet. And
6 the two bedrooms are close to 740.

7 CHAIRPERSON JORDAN: All right
8 guys, okay, so -- that's just the relief, this
9 is, okay I see. All right I'm straight. Any
10 other questions of the applicant, Board?

11 (No audible response)

12 CHAIRPERSON JORDAN: The applicant
13 have anything else they want to present to the
14 Board before we go to the Office of Planning?

15 MR. MOLDENHAUER: I'd just like to
16 try to address some of the questions about the
17 first prong. And obviously can address those
18 also to the Office of Planning. In Office of
19 Planning's report they do indicate the property
20 does create uniqueness.

21 I think their question was more a
22 question of uniqueness that then directly

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1 relates to the practical difficulty.

2 The uniqueness here, there are not
3 any other properties that are in this square
4 that are of this size, so you're dealing, or
5 it's not size, but of this shape.

6 It is a very unique shape to try to
7 create and design a mix of units based on that,
8 is an exceptional and a unique condition that
9 directly relates to the practical difficulty.

10 You also have then the challenge of
11 having these three separate doors which are
12 prominent from obviously S Street, from New
13 Jersey, and from Rhode Island, trying to design
14 a number of units.

15 Obviously and a unit mix without
16 having two separate doors or a door to nowhere
17 creates a question of how do you then modify or
18 identify the number of units that would be
19 appropriate for that unique type of structure
20 with multiple doors.

21 There also is as we indicated, the
22 front entrance with the existing staircase and

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1 so that naturally divides the units into one on
2 one side, and one on another side. In regards
3 to the type of unit mix again, going towards the
4 lot area requirement.

5 We also then have as indicated the
6 property is right near two large gas stations
7 and on the corner of a very highly trafficked
8 area.

9 So you have the unique location of
10 the site, which if you were to create larger
11 units which then go to the lot area requirement,
12 you're talking about units that may end up
13 having more of, larger families or in units that
14 are family sized in some cases.

15 And Jimmy can attest why, and
16 provide more information on the marketing
17 challenges of that. Given the challenge of the
18 location as we indicated on looking onto, and
19 marketing, and trying to sell a unit that is
20 larger for a larger value that is looking onto
21 two gas stations.

22 And has the challenge of the safety

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1 for potential use in order to marketing that for
2 a larger family or something. So I believe
3 that those all are factors.

4 And the question of marketability,
5 and practical difficulty and reuse all stem
6 from the Gilmartin case, and also stem from the
7 case for the Downtown Cluster which go to trying
8 to reuse, Downtown Cluster is reusing a
9 shopping center in the downtown area and trying
10 to relocate the lease type of, lease in that
11 building.

12 This is a situation where this is a
13 home which is on a very challenging corner, very
14 challenging, unique conditions associated with
15 it. And the question here is the practical
16 difficulty in regards to re-utilization of that
17 building, bringing it back to life, also an
18 attempt of adaptive reuse.

19 As you heard testimony from Mr.
20 Bloom about the attempt to try to reuse the
21 joist and the floors and the opening that
22 already currently exists, dividing the

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1 property pretty much into two.

2 At this point, I'll reserve any
3 additional closing for after OP.

4 CHAIRPERSON JORDAN: Yes, because
5 you were kind of in a closing mode. I thought
6 I'd just let you go on, but any Office of
7 Planning?

8 MS. THOMAS: Yes, good morning, Mr.
9 Chairman, members of the Board. Karen Thomas
10 with the Office of Planning.

11 OP appreciates that this property
12 would be revitalized and brought back to some
13 viable use as a residential use, but we have an
14 issue at 100 percent lot occupancy.

15 You have an addition that goes on
16 top, a top floor addition that doesn't meet that
17 occupancy requirements as well. We see no
18 need. We can't clear that first part of the
19 test as to the reason for the addition.

20 Further to that, they're including
21 another unit in a FEMA flood zone as they
22 stated.

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1 So if one were to look at a case, if
2 you were just bringing the case on, you know
3 you're renovating the building. And the floor
4 pattern, and the shape of the building is,
5 presents a practical difficulty with the three
6 entrances, we could see perhaps where they
7 could have just used the two floors to create
8 the four units.

9 But we cannot clear that, we cannot
10 support the addition, the roof top addition and
11 the additional unit in the basement.

12 We have no issues with the parking,
13 we think that's commendable what they are
14 trying to do. But we couldn't clear that
15 hurdle with the first prong with respect to the
16 addition at a top floor.

17 I'll be happy to take any questions.

18 CHAIRPERSON JORDAN: Board, any
19 questions of Office of Planning?

20 COMMISSIONER TURNBULL: Thank you,
21 Ms. Thomas. So you have no issue with four
22 units in this building?

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1 MS. THOMAS: If it came to just
2 looking at the floor plate, and they were
3 retaining the, with respect to the three
4 entrances that exist, and you had to, and that
5 was that their claim solely on that basis, we
6 would say that there's a practical difficulty
7 in maintaining those three entrances to the
8 building, to the renovation.

9 COMMISSIONER TURNBULL: What about
10 if they added the basement for five units?

11 MS. THOMAS: I cannot support the
12 addition for five units because they already
13 stated that this is in a flood zone. I don't
14 see how that support of a basement unit is --

15 COMMISSIONER TURNBULL: Although
16 if it was habitable in the past, I mean there's
17 a risk I understand, I'm just curious.

18 MS. THOMAS: I didn't think that
19 they said it was habitable in the past. If it
20 was --

21 COMMISSIONER TURNBULL: I'm not
22 sure if, yes.

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1 MS. THOMAS: -- a garage, it was I
2 believe.

3 COMMISSIONER TURNBULL: Okay,
4 okay. Could they go for a map amendment change
5 of the property? I don't know what that would,
6 that would be C-2A though?

7 That would be the only, that would
8 be ridiculous.

9 MS. THOMAS: Yes, I couldn't say at
10 this point, how that line would brought in.

11 COMMISSIONER TURNBULL: Yes, it's
12 struggling. Okay, I was just curious.

13 MS. THOMAS: Yes.

14 COMMISSIONER TURNBULL: Thank you.

15 CHAIRPERSON JORDAN: Let me ask, I
16 thought you said that you do find that the three
17 entranceways are unique to this property?

18 MS. THOMAS: As a corner property
19 you had three entrances to the house at that
20 point, and if you weren't going to remove that,
21 I could be swayed at that. And the floor plan
22 --

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1 COMMISSIONER TURNBULL: I think
2 that's how she's getting to four units.

3 MS. THOMAS: Yes.

4 CHAIRPERSON JORDAN: Okay.

5 MEMBER HINKLE: Yes, Mr. Chair,
6 thank you.

7 So I'm looking at the zoning map Ms.
8 Thomas, and as the applicant stated, this
9 property is essentially surrounded by C-2A.
10 Now C-2A would allow significantly greater
11 density wouldn't it, to some extent?

12 MS. THOMAS: C-2A would allow up to
13 50 feet, I believe, matter-of-right, 65 with a
14 PUD.

15 MEMBER HINKLE: And there's no
16 restriction in terms of the number of units
17 related to the size of the property. Is that
18 correct? I could be wrong.

19 MS. THOMAS: No number of units,
20 but height and density, FAR.

21 MEMBER HINKLE: I mean this is a
22 personal gripe of mine, is when you know,

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1 zoning, districts actually are split along you
2 know the middle of the roadway. So you get
3 different things on each side.

4 But it seems if you were to really
5 hold them to the R-4 zoning, the rest of the
6 neighborhood surrounding it could certainly be
7 redeveloped into much denser area. So you
8 would actually have a bit of a anomaly here in
9 this corner.

10 MS. THOMAS: It's certainly
11 unusual that this building is at a busy
12 intersection, I'll give them that. It might be
13 harder to be convinced to do a single family
14 dwelling, but you know, they didn't say why you
15 can do a flat?

16 This is a very, this is a small
17 building regardless of how it may look at the
18 corner. It looks big, but in actuality you
19 have a 1600 square foot lot, at 100 percent lot
20 occupancy. 1600 square foot is still 1600
21 square feet whether it looks big or whatever.

22 They didn't say how they can do a

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1 flat?

2 MEMBER HINKLE: Okay, thank you.

3 MS. THOMAS: I'm pushing it out to
4 help them at four.

5 CHAIRPERSON JORDAN: And but
6 unique-wise as Mr. Hinkle has indicated, the
7 way this property is situated right at that
8 boundary line there, it's really influenced by
9 the C-2A district. Would that be correct?

10 MS. THOMAS: We have a lot of dwells
11 in the district.

12 CHAIRPERSON JORDAN: But not this
13 area?

14 MS. THOMAS: We have a lot of R-4,
15 butting at C-2A. Yes, this area does. And we
16 had one instance where they had to go, get a map
17 amendment to do that.

18 CHAIRPERSON JORDAN: Got it.

19 MS. THOMAS: Right?

20 COMMISSIONER TURNBULL: Mr. Chair,
21 I can remember we, Office of Planning brought
22 before us on Georgia Avenue, a lot of

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1 residential homes were on Georgia Avenue and
2 they were being used for commercial reasons.
3 So we had a map amendment that would change a
4 lot of those point buildings and made it
5 consistent.

6 We had some that were going to be,
7 basically OP came back and rechanged Georgia
8 Avenue in certain areas and made it more
9 consistent, separating residential from the
10 commercial strip, which again, getting back to
11 what Mr. Hinkle was -- and what I was -- I don't
12 know if it makes sense to ask for a, that they
13 need a map amendment or not? But that's
14 possibly one option.

15 Otherwise I think Ms. Thomas has
16 made a, you know, a case for saying if, they
17 could easily do a four unit building here.

18 CHAIRPERSON JORDAN: Board any
19 additional questions for Planning?

20 (No audible response)

21 CHAIRPERSON JORDAN: Does the
22 applicant have any questions for Planning?

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1 MR. MOLDENHAUER: Just a few. So
2 Ms. Thomas you're saying that you could support
3 a four unit?

4 MS. THOMAS: Looking at the floor
5 plan as it exists, and the internal structure,
6 four units could be supported.

7 MR. MOLDENHAUER: But that would be
8 the same use variance standard that would be
9 whether it's four or whether it's seven.

10 MS. THOMAS: We're not using a use
11 variance --

12 MR. MOLDENHAUER: Sorry, area
13 variance, I'm sorry, I apologize. I had a
14 brain absentee moment. So it would be the same
15 area variance standard whether it's four or
16 whether it's seven?

17 MS. THOMAS: No. You're adding,
18 we have an issue with that addition to the roof
19 to create an, that structure doesn't go all the
20 way up.

21 MR. MOLDENHAUER: So your concern
22 is with the addition to the existing

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1 non-conformity --

2 CHAIRPERSON JORDAN: She's talking
3 about the, excuse me, the very basic part of the
4 test.

5 MS. THOMAS: Yes.

6 CHAIRPERSON JORDAN: She's saying
7 the uniqueness is either going to be there or
8 not. Is that what you're saying?

9 MS. THOMAS: Yes, that's what I'm,
10 yes. The uniqueness is going to be there.

11 MR. MOLDENHAUER: And how is the
12 Office of Planning, because I didn't see in the
13 report, differentiating, one of your questions
14 was well it could do a flat or maybe four units.

15 Are they analyzing the practical
16 difficulty that's been evidenced by the profit
17 and loss analysis for economic hardship as to
18 why four units does not financially work, as
19 opposed to seven units?

20 MS. THOMAS: No, we're not looking
21 at, we did not look the profit and loss. No.

22 MR. MOLDENHAUER: Thank you.

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1 CHAIRPERSON JORDAN: But you
2 didn't provide, I have not seen four units.

3 MR. MOLDENHAUER: We provided, I'm
4 sorry, maybe we've had three --

5 CHAIRPERSON JORDAN: Three, five,
6 eight, correct. Three, five, eight.

7 MR. MOLDENHAUER: But and then the
8 three, five, and eight. So the five obviously
9 does not work, and we then provided the three
10 which was without providing -- and I can have
11 Mr. Edgerton provide more of an analysis on the
12 why four doesn't work in that regard.

13 But we showed I think kind of a
14 mirroring image of below and right above why
15 five doesn't work financially. We can go in a
16 little more description of that if the Board --

17 CHAIRPERSON JORDAN: Well I think I
18 can extrapolate that. One thing that people
19 constantly do, putting back their purchase
20 price and including it at the above line. But
21 you don't really loose the purchase price if
22 you're keeping the property, you're going to

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1 get it back, as we look at return on investment
2 and then how we use it.

3 You're showing that even if you had
4 eight units here, that your return on
5 investment is 5.5 percent? What is it with
6 seven?

7 MR. EDGERTON: That is correct.
8 The return on investment with seven units is
9 just under two percent, 1.95 is what the profit
10 loss analysis shows.

11 CHAIRPERSON JORDAN: So you would
12 do this deal for seven units with a two percent
13 return?

14 MR. EDGERTON: It is a, not the most
15 comfortable situation but given the practical
16 difficulties and what work must be done to the
17 roof regardless, we feel that this meets the
18 concerns and advice from the community.

19 And also brings a small amount of
20 return incentive to the team to turn this
21 property back into habitable use.

22 CHAIRPERSON JORDAN: Okay. Any

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1 additional questions from the applicant to
2 Office of Planning, please? You had questions
3 of Planning?

4 MR. MOLDENHAUER: Oh, I'm sorry,
5 no. Those were all my questions for Office of
6 Planning.

7 CHAIRPERSON JORDAN: All right, so
8 then let me change screens here. Trying to do
9 this sometimes my finger becomes all thumbs on
10 these devices.

11 Okay, is anyone here from
12 Department of Transportation?

13 (No audible response)

14 CHAIRPERSON JORDAN: You've talked
15 to Department of Transportation about your
16 proposed mitigation plan. Correct?

17 MR. MOLDENHAUER: Yes, the
18 applicants have had actually extensive
19 conversations with them. Trying to see if they
20 could preserve the half curb driveway, talking
21 about all the mitigation measures that they
22 would provide.

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1 And DDOT is supportive of the
2 project, but obviously was very limited in
3 their ability to provide any curb cuts or
4 provide any balance in regards to addressing
5 the parking issue.

6 CHAIRPERSON JORDAN: Okay, did you
7 have conversations with DMV?

8 MR. MOLDENHAUER: No.

9 CHAIRPERSON JORDAN: I'm still
10 cross, isn't DMV the one that was the force in
11 the RPP and visitor parking and all that stuff?
12 You know, we've learned that there's a
13 disconnect. And you talked to DDOT, doesn't
14 help really with the RPP stuff. And so I didn't
15 know if you've had conversations?

16 MR. MOLDENHAUER: We have not, but
17 we have and we would be willing to accept
18 conditions in regards to providing a lease or
19 condominium by-laws, covenants, and
20 restrictions.

21 Also then requiring that either the
22 landlord or the condominium association

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1 obtains authorization to check the DMV records.
2 Similar to other cases that have provided, I
3 think, a wealth of contractual enforcement
4 obligations on the property.

5 CHAIRPERSON JORDAN: Okay, so we do
6 have a letter of no objection from the
7 Department of Transportation on this.

8 ANC 6E, any representative ANC 6E?

9 (No audible response)

10 CHAIRPERSON JORDAN: We do have
11 that letter of support on a 5-2 vote in support.
12 Do we have that in the record now? Did we get
13 that, we got that yesterday?

14 MR. MOY: Well if it's found, I was
15 just looking that because it's --

16 CHAIRPERSON JORDAN: I think we got
17 it yesterday.

18 MR. MOY: -- because it's not
19 exhibited in the record if we did receive it
20 yesterday.

21 CHAIRPERSON JORDAN: I think we
22 might have. But okay, we can proceed on.

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1 Is there anyone here wishing to
2 speak in support, well we do have 20 letters of
3 support from neighbors on this project. Is
4 there anyone here wishing to speak in support
5 of this application? Anyone is support?

6 (No audible response)

7 CHAIRPERSON JORDAN: Anyone
8 wishing to speak in opposition? Anyone in
9 opposition?

10 (No audible response)

11 CHAIRPERSON JORDAN: Well let's
12 turn back now to the applicant for any rebuttal.

13 MR. MOLDENHAUER: At this point in
14 time I'd just like to turn it over to Mr.
15 Edgerton to address OP's comments about the
16 fact that you know, they haven't really
17 analyzed or been able to evaluate this on an
18 economic feasibility for the practical
19 difficulty standards since they have conceded
20 that they do satisfy the first prong.

21 So I'd like him to just simply,
22 briefly walk through the hardship for the

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1 practical difficulty for the case.

2 CHAIRPERSON JORDAN: Yes, but
3 remember now OP can see and it may not be where
4 some other people on the Board are. I'm just
5 going to, so that you don't miss that.

6 MR. EDGERTON: Yes, understood.
7 Looking at the sales comparables, and we can
8 only look at what the market is currently. And
9 I've reviewed this with my broker as well and
10 he has a letter in support of the comparables
11 for sales comps.

12 And we felt that smaller units may,
13 tab the units when going up into the market, get
14 crowded out by townhomes and make them
15 potentially harder to sell as there'll be more
16 townhomes in this area.

17 We feel that with the roof in its
18 current condition, no matter what, there'll be
19 significant repairs. Without the additional
20 floor space of that third floor and the units
21 that will be up there, it makes it very
22 difficult when we're below seven units to have

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1 this become a net zero or a small net profit
2 project.

3 The financial constraints are
4 significant and it leaves a very small margin
5 of error to make sure that we are successful in
6 creating a net neutral or a net positive
7 project.

8 CHAIRPERSON JORDAN: Okay. Is
9 there anything else from the applicant in
10 rebuttal?

11 MR. MOLDENHAUER: I just wanted to
12 address some of the comments that were
13 referenced from the Board and talk through the
14 question about a map amendment.

15 And I obviously, we pursued this
16 because we believe that this was the most
17 appropriate way to move forward with a
18 challenging site.

19 CHAIRPERSON JORDAN: Is this like
20 your closing?

21 MR. MOLDENHAUER: This is
22 addressing the question, yes. And then I was

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1 going to make a quick closing afterwards.

2 CHAIRPERSON JORDAN: Okay.

3 MR. MOLDENHAUER: The site would
4 not be conducive to a map amendment in our
5 evaluation. In addition to that, based on the
6 comprehensive plan, in addition to that I think
7 the problem would be that you would end up
8 having a matter of right development which
9 would be really not in keeping with the
10 community here. Even though we are requesting
11 an addition to the non-conformity for the third
12 floor.

13 Three floors is permitted, or three
14 stories are permitted in the R-4 zone and that
15 is in keeping with the character of the
16 community.

17 It would, if it was for a map
18 amendment, a map amendment I think would allow
19 as a matter of right without the beneficial
20 restrictions that we are presenting to the
21 Board in regard to the transportation demand
22 management studies, in regards to RPP and VPP,

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1 and the additional monetary incentives.

2 Those benefits would not be, rather
3 would be simply a matter of right project in a
4 much higher density, which we don't believe the
5 community and the neighbors would be
6 supportive.

7 We believe as we indicated, we do
8 have 20 letters of support indicating they are
9 supportive of the number of units here, they are
10 very excited to see this property become the
11 beauty that it once was, obviously many, many
12 years ago.

13 As the Office of Planning does
14 indicate in their report, the property had been
15 previously used, many years ago as a dentist's
16 office. Because the use of this property was
17 so large, it obviously could not be used simply
18 as an NR, as a residential use, but rather
19 residential and office use for a home office,
20 dental office.

21 That being said, we believe that the
22 fact that this is the only property even in this

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1 area, on this course or strip that actually
2 fronts three different streets. That it had
3 the three existing doors which create a natural
4 division in the site.

5 The desire to try to do an adaptive
6 reuse on the site, the fact that OP does see
7 that the property is unique based on its shape,
8 based on its location across from a C-2A zone,
9 two large gas stations.

10 We feel that you know, the challenge
11 of being able to satisfy and provide, while
12 obviously in this case a very small margin.

13 This is a smaller development
14 group, this is not a group of kind of larger
15 developers that are looking for a higher degree
16 of return or acquire that for their equity
17 investors.

18 This is a group that has never come
19 before the BZA before but is simply trying to
20 return this property and improve this area by
21 doing what they believe is a very high quality
22 design, but does require relief in this

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1 instance.

2 And if the Board requires any
3 additional supplemental information, we'd be
4 more than willing to provide that as well.

5 CHAIRPERSON JORDAN: So was that
6 rolling into your closing, or have you?

7 MR. MOLDENHAUER: I did, that was
8 my closing. I apologize Chairman Jordan for
9 being long winded, but that was my answer and
10 then my --

11 CHAIRPERSON JORDAN: No, I just
12 didn't know where the lines were drawn, I was
13 just trying to stay with you. Okay. Then we
14 would close the hearing based upon the record
15 derived.

16 Is the Board ready to deliberate or
17 do you need additional information? Where are
18 we Board?

19 COMMISSIONER TURNBULL: Well we
20 could start deliberation, then if we decide
21 that we need more information we can then ask
22 for it I guess.

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1 CHAIRPERSON JORDAN: All right,
2 good. You want to lead us off here?

3 COMMISSIONER TURNBULL: Yes, I
4 mean, we both want to talk about the map
5 amendment now, and I threw out the map amendment
6 mainly because I wanted to hear the mindset of
7 the applicant.

8 I seriously, and you know that the
9 Zoning Commissioner wouldn't approve it just
10 because of where it is and what it would do. But
11 I just threw that out as a talking point. I
12 wanted to hear what was, get some feedback.

13 I guess I'm a little bit troubled by
14 some of the comments that I heard. I have this
15 feeling that, why have zoning regs? If it
16 isn't profitable for the applicant and it's not
17 marketable, it's not fair.

18 And so it's like I don't want to
19 mention a certain city in the south that has no
20 zoning regs and you can build whatever you want,
21 but that's what my feeling is. That if it's not
22 profitable and you can't -- our bottom line is

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1 this, it's not fair. You ought to let us do it
2 because we're doing such a good job here.

3 I really don't know if they've
4 really -- and I think Ms. Moldenhauer's given
5 OP's comments a little bit more than what they
6 actually said.

7 I think regardless, I think one of
8 the comments in the OP report regardless of size
9 of the lot and irregular shape, the shape would
10 not justify for providing four times the
11 permitted number of units on the site.

12 So I think that's still the
13 threshold, four, and we still haven't got that,
14 other than we hear profitability,
15 marketability, and that's it.

16 And I'm still troubled by what I'm
17 hearing as to the overall building and adding
18 the extra floor and putting this ugly little
19 penthouse on top, but it's profitable, it's
20 marketable and people will be able to live on
21 it regardless of the fact that you know, it's
22 only 400 square feet or 700 square feet or

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1 whatever up to here, some 40 or 550, 560.

2 I'm just troubled and I don't want
3 to necessary kill this but I think that the
4 applicant has got to go back and give us more
5 information. I don't know whether they need to
6 meet with the Office of Planning some more and
7 talk about, but I think, you know I think the
8 nugget that's out there and which they don't
9 want to accept is the four units.

10 I guess I could have my arm bent and
11 go for five. I know Ms. Thomas will look
12 askance at me when I agree to that but going to
13 the seven I think is a stretch.

14 But I think the applicant needs to
15 really, and then come yet for me to say I can
16 approve this project I'm still struggling with
17 that first prong.

18 CHAIRPERSON JORDAN: I'm kind of
19 with you on this but let me tell you I mean, I
20 think Ms. Moldenhauer's presentation helped
21 bring me back, because initially after I was
22 doing my review before this, I was not anywhere

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1 near on board.

2 However, I think that she has shown
3 some realistic uniqueness that directly ties
4 into the relief being requested, especially the
5 100 percent occupancy. Lot occupancy as it is,
6 for the property the entryway there, its
7 location and proximity to the commercial zone.

8 And I did hear Office of Planning
9 kind of come back and say yes, regardless of
10 what you have there, this property is unique and
11 is just a little different than what the report
12 said. But it didn't say everything that the
13 applicant expanded on in that regard.

14 So I'm still really kind of on the
15 fence on this one. That's just my thought and
16 I would agree too. Mr. Hinkle any thoughts on
17 this?

18 MEMBER HINKLE: Well, I certainly
19 think the property is unique. And the
20 situation in terms of how it's located on three
21 streets, adjacent to commercial property
22 convinces me that larger units would be

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1 difficult.

2 Now with that said, you know you are
3 talking about an addition to it to increase the
4 number of units. I'm just about there but I'm
5 not sure what I'm looking for.

6 CHAIRPERSON JORDAN: You know I
7 think this is what we're going to do. We're
8 going to tie this one over, give you opportunity
9 to take in what the Board is saying.

10 I'm also concerned about the two
11 percent profit, because I don't know if we're
12 just ramping this thing up and not going to
13 really do it. Two percent is a realistic deal
14 to try to do. Are we just ramping this up?

15 So I think what we do is continue
16 this, give the applicant the opportunity, and
17 OP the opportunity to have some additional
18 conversations and fill in, in light of this
19 conversation that we're having. I don't think
20 you would have the votes anyway to be where you
21 need to be if we moved it vote today.

22 And there's just three of us hearing

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1 this case, so it'd require you to have a 3-0 vote
2 to move forward, period. So no harm, no foul,
3 I think we have information. I think you have
4 information from us about what we're thinking
5 and what the concerns are.

6 Mr. Moy, where can we push this? To
7 October 20, something, would that give you
8 enough time to rework it?

9 Is it October 20th, what was that
10 date we were throwing around earlier?

11 MR. MOY: It was October 21st, sir?

12 CHAIRPERSON JORDAN: What's the
13 docket look like?

14 MR. MOY: It's chocked full of
15 nuts, yes.

16 CHAIRPERSON JORDAN: Dave, can we
17 make it the first of November?

18 MR. MOY: I didn't mean to sound
19 coy, but you know we --

20 CHAIRPERSON JORDAN: Oh, no. You
21 can do that.

22 MR. MOY: -- it's a pretty full

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1 docket, sir. But you know --

2 CHAIRPERSON JORDAN: So what's the
3 next docket?

4 COMMISSIONER TURNBULL: You
5 weren't referring to the applicants involved.

6 MR. MOY: I think the 28th is very
7 doable for the Board, but I don't know --

8 CHAIRPERSON JORDAN: What 28th?

9 MR. MOY: October 28th.

10 CHAIRPERSON JORDAN: October 28th
11 is doable for the Board.

12 MR. MOY: October 28th then.

13 CHAIRPERSON JORDAN: Okay, make
14 sense? We're good?

15 MR. MOLDENHAUER: And then any
16 documents would be filed by the 21st?

17 CHAIRPERSON JORDAN: Yes.

18 MR. MOLDENHAUER: As a line.

19 CHAIRPERSON JORDAN: Yes, there's
20 nobody responding to anything. It's just for
21 us to go through it and read everything as you
22 know, and give labor.

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1 MEMBER HINKLE: Is there a list of
2 proposed conditions on this?

3 CHAIRPERSON JORDAN: Yes, they
4 were in the pre-hearing statement.

5 MEMBER HINKLE: Okay.

6 MR. MOLDENHAUER: We'll make sure
7 that it's in one single page which is easier to
8 grab.

9 MEMBER HINKLE: Or anything
10 updated would be --

11 COMMISSIONER TURNBULL: And I
12 would recommend very much a meeting or two with
13 OP.

14 MR. MOLDENHAUER: Absolutely,
15 thank you.

16 CHAIRPERSON JORDAN: Well we
17 appreciate it. Thank you. You're still in
18 the ball game but you'll handle it, I'm sure.

19 MR. MOY: This is a continued
20 hearing, Mr. Chairman?

21 CHAIRPERSON JORDAN: Yes, it is.

22 MR. MOY: Thank you.

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1 CHAIRPERSON JORDAN: Thank you,
2 thank you. Thank you. Mr. Moy, any other
3 business coming before the Board today?

4 MR. MOY: Not from the staff, sir.

5 CHAIRPERSON JORDAN: Okay, Board
6 anything else?

7 (No audible response)

8 CHAIRPERSON JORDAN: Then we're
9 adjourned. Thank you, thanks everybody.
10 Thanks Ms. Thomas.

11 (Whereupon, the above-entitled
12 matter went off the record at 11:45 a.m.)

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