

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

SEPTEMBER 30, 2014

+ + + + +

The Public Hearing convened at 9:58 a.m. in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice, Commissioner Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- LLOYD J. JORDAN, Chairperson
- S. KATHRYN ALLEN, Vice Chairperson
- MARNIQUE HEATH, Commissioner
- JEFFREY HINKLE, Commissioner
- ANTHONY J. HOOD, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

Sherry Glazer, Esq.

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEVEN COCHRAN
STEPHEN GYOR
STEPHEN MORDFIN

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Adjourn

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

2 (9:58 a.m.)

3 CHAIRMAN JORDAN: Good morning,
4 We have been delayed and we're still missing our
5 counsel who's stuck on the Red Line and we had
6 others traveling on the Red Line and people we
7 understand through the District are going crazy
8 and being late and tardy because the Red Line
9 has a lot of issues this morning. But we're
10 going to go ahead and proceed.

11 So this hearing would please come to
12 order. We're located at Jerrily R. Kress
13 Memorial Hearing Room at 441 4th Street, N.W.
14 Today's date is September 30, 2014 and we are
15 here for the Board of Zoning adjustment's
16 public hearing on the docket scheduled for
17 today.

18 My name is Lloyd Jordan,
19 Chairperson; to my right is S. Kathryn Allen.
20 Vice Chair; to her right is Jeffrey Hinkle,
21 Member of the Board, to my immediate left is
22 Marnique Heath, Member of the Board and to her

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1 left is the Chairman of the Zoning Commission,
2 Anthony Hood sitting in as a Member of the Board
3 of Zoning Adjustment for today.

4 Today's proceedings are being
5 Webcast live and being recorded by a court
6 reporter, so therefore I'm going to ask you to
7 refrain from any disruptive noises here in the
8 hearing room. This would be a good time to
9 silence any device that may make noise.

10 If you're going to present
11 testimony or make a statement to the Board I'm
12 going to need you to do two things prior to
13 testifying, the first of which is to complete
14 two witness cards per person. That's two
15 witness cards per person and give those to the
16 court reporter who is seated to my right.

17 So if you're going to testify or
18 provide any statement to the Board please
19 complete two witness cards and hand them to the
20 court reporter seated to my right.

21 The second thing I'm going to need
22 you to do is to now stand and to take the oath

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1 to be given by Mr. Moy, the Board Secretary
2 please.

3 (WITNESSES SWORN)

4 CHAIRMANS JORDAN: Are there any
5 preliminary matters which we need to address,
6 Mr. Moy, from your standpoint before we do some
7 other things here?

8 MR. MOY: Thank you, Mr. Chairman,
9 no. the only thing would be that I suggest that
10 the Board -- there's some applications that
11 require some clarification on the relief being
12 requested. Other than that then the cases are
13 before the Board. CHAIRMAN JORDAN:
14 All right. Thank you.

15 Let me have the applicant in 18708,
16 well we've got a couple of issues in 18708 but
17 I don't think I necessarily have to deal with
18 the parties so let me just have a
19 representative for the applicant, 18708.
20 Representative for the applicant? All right.
21 Please identify yourself.

22 MR. SULLIVAN: Good morning, Mr.

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1 Chairman and Members of the Board. My name is
2 Marty Sullivan with the law firm of Sullivan &
3 Barrows.

4 I'm here on behalf of the applicant
5 in 18708. I was recently retained; the contract
6 purchaser's counsel withdrew recently and so
7 I--

8 CHAIRMAN JORDAN: Do we have your
9 entry and the authorization?

10 MR. SULLIVAN: I have an
11 authorization letter here.

12 CHAIRMAN JORDAN: Let's make sure
13 that gets in the record. Reviewing this file
14 and seeing that there's a late request for
15 relief I am of the mind to remove this from
16 today's docket and require that it gets posted
17 properly.

18 The relief has changed from being a
19 special exception to a variance and the request
20 for changing of September 24 is absolutely
21 unacceptable without prior notification and
22 that would be what I offered to the Board that

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1 should happen with this case. And unless
2 someone says something different, then I would
3 move this to another date and require that
4 it's properly posted.

5 Mr. Moy, can we have a date please.

6 MR. MOY: Yes sir.

7 CHAIRMAN JORDAN: And also please
8 provide the authorization.

9 MR. MOY: The next appropriate
10 date, Mr. Chairman, would be October -- I was
11 going to say the 21st but you have a huge docket
12 on the 21st. So I think the 28th is the
13 earliest we could have that and still have
14 enough time for posting and, I would suspect,
15 the applicant's consultation with ANC.

16 CHAIRMAN JORDAN: And with
17 everybody else. As we know, one of the things
18 I've seen in this record is that there's not a
19 lot of communication. There's documents that
20 are still missing. I think the Office of
21 Planning needs documents. There's community
22 and neighborhood people who've tried to have

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1 conversations, Mr. Sullivan, and I think you
2 need to have some frank discussions with.

3 But the bottom line this thing needs
4 to get posted properly. All right. That would
5 be the order.

6 MS. MOLDENHAUER: Chairman
7 Jordan, can I just-- Meredith Moldenhauer on
8 behalf of the consolidated individuals in
9 opposition. There's a lot of information
10 that's been requested by OPM by my clients. I
11 don't know if the Board wants to clarify some
12 additional documents that the Board may be
13 looking for in regard to the OP's list.
14 That's been something that's been of a
15 contention between ourselves and the
16 applicants.

17 CHAIRMAN JORDAN: All right. We
18 haven't accepted any of your party as party
19 status and I think you should have
20 conversations with Office of Planning Mr.
21 Sullivan, making sure whatever documents are
22 provided by them.

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1 I think there's been some
2 communication with those who oppose this that
3 have requested documents that they haven't had
4 and I just think you've got some work to look
5 at to do. And also please give Ms.
6 Moldenhauer the courtesy of providing that
7 information also to her and you two should have
8 dome dialogue.

9 MS. MOLDENHAUER: Is there a
10 deadline for filing so we can know that we'll
11 have a copy of that?

12 CHAIRMAN JORDAN: This is not even
13 set -- other that set for the hearing I haven't
14 identified your group as a party status so
15 please let's do it this way. Thank you.

16 Okay. Mr. Moy let's just -- there's
17 some items missing on trhe Industrial Bank
18 case, too. All right. Let's have the
19 representative on the Industrial Bank, 18809,
20 and the person from Office of Planning who has
21 this particular case too please.

22 So we need a representative of

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1 18809, Industrial Bank. 18809? I'm kind of
2 leery with dealing with some of this because we
3 don't know who's sitting on Metro but you know
4 it is what it is.

5 Well, for 18809 let's reschedule
6 18809 to another day. There's a number of issues
7 and documents that Office of Planning is still
8 seeking. Is that correct?

9 MR. GYOR: Good morning, Mr.
10 Chairman. That is correct.

11 CHAIRMAN JORDAN: And those
12 documents are absolutely necessary for us to
13 process and go forward with this. I would
14 also like to see the overall site plan to more
15 develop the landscaping plan, so let's be sure
16 we make a notification to them. And if they
17 have conversation would you please add that to
18 the list.

19 So let's move 18809 to another date.

20 MR. MOY: Yes, Mr. Chairman.
21 Again, the earliest would be October 28th and
22 we can still slide another application to that

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1 date. The 28th of October.

2 CHAIRMAN JORDAN: Okay. Good.

3 Thank you. We'll do that.

4 You know, I go back to these things
5 not being ready to be heard and these things
6 take up dockets. I just think there has to be
7 another way for us to get that together,
8 especially when people travel down, etc.

9 Okay. Let's do the top of the order
10 please.

11 MR. MOY: Okay. Very good and
12 again good morning, Mr. Chairman and Members of
13 the Board. That would be application No. 18825
14 of Christopher and Deborah Cushman. Mr.
15 Chairman, this is a request for a special
16 exception to allow a rear addition under
17 section 223, not meeting lot area, lot
18 occupancy, side yard and court requirements,
19 and this is as was advertised and publicly
20 noticed.

21 CHAIRMAN JORDAN: Okay. Can we
22 have the parties for 18825 come forward please?

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1 Okay. Please identify yourselves.

2 MR. JONES: Kim Jones, architect.

3 MR. CUSHMAN: Christopher
4 Cushman, property owner.

5 CHAIRMAN JORDAN: Now I think we
6 have everything to be able to move forward. Let
7 me talk about clarifying relief here. What
8 relief are you seeking because some things have
9 gone back and forth, whether or not there's a
10 need for relief under 401.3 is that correct?
11 Is that still your request for relief for 401?

12 MR. CUSHMAN: Well, we're
13 requesting a plot occupancy relief to go to 60
14 percent coverage.

15 CHAIRMAN JORDAN: Okay. All
16 right. I thought there was some additional
17 relief being discussed.

18 Office of Planning, do you want to
19 weigh in on that please?

20 MR. GYOR: Sure. Good morning.
21 Just to clarify. Pursuant to section 223 the
22 applicant would need lot occupancy relief and

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1 court relief. We have a note in our report that
2 side yard relief was also requested but I don't
3 believe upon further analysis that that is
4 necessary. And we also have a note that
5 2001.3 is needed but again upon further
6 analysis I think that those areas of relief are
7 covered under section 223 so I don't believe
8 that 2001.3 is needed.

9 CHAIRMAN JORDAN: Okay. So the
10 area relief under 223 is?

11 MR. GYOR: Lot occupancy and
12 courts.

13 CHAIRMAN JORDAN: Okay. And that
14 would be consistent. Okay?

15 MR. GYOR: Yes.

16 CHAIRMAN JORDAN: Okay. All
17 right. So we're not doing 2001.3. All right.
18 Mr. Gyor, is that good? Okay. Is there any
19 issues that any one of the Board needs to have
20 the applicant drilled down on? I think the
21 documentation in the application will support
22 the relief requested.

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1 Anyone have any issues, discussion,
2 anything they need from the applicant? Okay.
3 Good.

4 You have an opportunity to do a
5 presentation but we don't feel one is necessary
6 at this point but it's up to you whether or not
7 we can waive any additional testimony on your
8 part and we can proceed on.

9 MR. CUSHMAN: No, it's clear.

10 CHAIRMAN JORDAN: Yes, we have a
11 question.

12 VICE CHAIR ALLEN: Thank you, Mr.
13 Chairman. OP indicated that the ANC had
14 approved but we didn't have a letter, or did we
15 get one?

16 CHAIRMAN JORDAN: Did we get one?
17 Thanks.

18 VICE CHAIR ALLEN: I just wondered
19 if you did a presentation to the ANC?

20 MR. JONES: We did go to ANC, yes.

21 CHAIRMAN JORDAN: And they voted
22 in support is my understanding?

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1 MR. JONES: Yes, they did.

2 CHAIRMAN JORDAN: And the Office
3 of Planning Report indicates that they voted in
4 support. We don't have a letter do we?

5 MR. MOY: No sir.

6 CHAIRMAN JORDAN: Okay. All
7 right. We'll return to Office of Planning and
8 see if there's anything in addition that you
9 think you might need to add to this.

10 MR. GYOR: No, Mr. Chairman. We
11 support the applicant's request for relief and
12 rest on the record. Thank you.

13 CHAIRMAN JORDAN: Board, any
14 questions for Office of Planning. The
15 applicant any questions for Office of Planning?

16 MR. CUSHMAN: No.

17 CHAIRMAN JORDAN: Okay. Anyone
18 here from the Department of Transportation for
19 this case? Department of Transportation? We
20 do have a letter of no objection to the relief
21 requested from the Department of
22 Transportation.

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1 Is there anyone here from ANC-6A?
2 ANC 6-A? We don't have a letter from ANC-6A
3 but it's been reported from the Office of
4 Planning that ANC-6A voted in support.

5 Is there anyone here wishing to
6 speak in support of the application? Anyone
7 wishing to speak in support? Anyone wishing to
8 speak in opposition? Anyone wishing to speak
9 in opposition? Then we will close the hearing
10 on the record already before the Board. Board
11 ready to deliberate. I would move that we
12 grant the relief as defined in this hearing for
13 court relief and lot occupancy under 223 be
14 approved.

15 VICE CHAIR ALLEN: Second.

16 CHAIRMAN JORDAN: We're back to
17 having a race. Last week was very lackluster.
18 You guys let me down. You have to see who's
19 going to do the second and sometimes
20 everybody's going and then last week it was kind
21 of so laid back. We had to beg for seconds.

22 So motion made and second to approve

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1 the relief as defined. Any unreadiness? All
2 those in favor say aye. Those opposed nay.

3 (VOTE TAKEN)

4 The motion carries. Mr. Moy?

5 MR. MOY: Yes sir. Staff would
6 record the vote as 5-0 and this is on the motion
7 of Chairman Jordan to approve the relief
8 requested and amended and as I heard it, it's
9 for special exception 223 not meeting lot
10 occupancy and court requirements.

11 Second the motion, Vice Chairperson
12 Allen and also in support Mr. Hood, Ms. Heath
13 and Mr. Hinkle. Motion carries, Mr. Chairman.

14 CHAIRMAN JORDAN: All right.
15 Thank you. Summary order please.

16 MR. MOY: Thank you.

17 MR. JONES: Thanks for your
18 approval.

19 CHAIRMAN JORDAN: Again, if
20 you're going to speak to the Board please
21 prepare two witness cards per person and hand
22 them to the court reporter prior to testifying.

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1 Okay. 18826?

2 MR. MOY: Yes sir. Application No.
3 18826. This is the application of I believe it's
4 pronounced Lalit K. Gupta. This is for special
5 exception relief to allow an accessory
6 apartment under section, as advertised,
7 section 202.10 and pursuant to section 223 and
8 a special exception from the side yard
9 requirements.

10 CHAIRMAN JORDAN: Please identify
11 yourself.

12 MR. HORSEY: Outerbridge Horsey,
13 architect for the owner.

14 CHAIRMAN JORDAN: Say the last
15 name again?

16 MR. HORSEY: Horsey. H-o-r-s-e-y.

17 CHAIRMAN JORDAN: A couple of
18 things before we begin. One, has there been a
19 request for a waiver under 202.10? Do we have
20 a request for a waiver from the applicant? I
21 think you discussed it with the Office of -- has
22 Planning talked with them regarding a request

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1 for a waiver? A waiver of the provisions under
2 202.10 because this is a semi-detached dwelling
3 and that section talks in terms of a detached
4 dwelling.

5 MR. COCHRAN: Mr. Chair, for the
6 record Steve Cochran. I've dealt with other
7 accessory dwelling unit cases and you have
8 considered that preliminary section in the past
9 to be one of the factors that could be waived.

10 CHAIRMAN JORDAN: Okay. We'll
11 accept that as a waiver.

12 MR. COCHRAN: Thank you.

13 CHAIRMAN JORDAN: That's exactly
14 what I was asking. Had there been a request for
15 a waiver.

16 Let me go to you, Mr. Cochran. Is
17 there, in your opinion, a request or a need for
18 relief of 2001.3, because this is
19 non-conforming?

20 MR. COCHRAN: Again,
21 traditionally the Board under your
22 chairmanship has thought that there needed to

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1 be a waiver from 2001.3. I'm simply noting
2 that that is your opinion.

3 CHAIRMAN JORDAN: Well, that's
4 actually up to the applicant to do it. I just
5 need -- I mean it's kind of borderline for me
6 regarding the expansion of this
7 non-conformity.

8 MR. COCHRAN: I mean prior to your
9 chairmanship the Office of Planning had not
10 considered that that kind of relief was
11 necessary under 223, but we take our guidance
12 from you under your chairmanship.

13 CHAIRMAN JORDAN: Okay. Mr.
14 Hood?

15 COMMISSIONER HOOD: All right.
16 Let me go back through here again. Sometimes I
17 make these notes so far in advance. I've got
18 it, I see where I am. It was in your note that
19 said a variance was needed from 2001.3, but
20 we're on the same page. Got it. Okay. I've
21 caught up with myself in your report.

22 CHAIRMAN JORDAN: Okay. Board,

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1 do we have any other issues with this matter?
2 I think we can accept this as submitted. I find
3 there's no issue with the detached dwelling and
4 semi-detached dwelling issue in my opinion for
5 this and we accept it as a waiver request for
6 ie.

7 MR. MOY: Mr. Chair, just to
8 correct the record. In fact, the Historic
9 Preservation Review Board has approved the
10 concept for the addition.

11 CHAIRMAN JORDAN: Okay. We'll
12 get to you.

13 MR. MOY: Oh sorry.

14 CHAIRMAN JORDAN: Okay. I
15 appreciate it as well your experimenting with
16 these reports which is always moving and
17 positive, I really appreciate you taking some
18 of the effort that you do. It seems like you're
19 trying to make things better for us and
20 arranging your reports, and I really appreciate
21 them. They're easy to get to the gist of what
22 our problems or our issues with these cases.

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1 Board, any questions we need of this applicant?

2 Mr. Horsey, we don't necessarily
3 have to hear anything from you unless you feel
4 like you need to?

5 MR. HORSEY: Thank you, Mr.
6 Chairman, not really. I just wanted to make sure
7 I did file an amendment to the case and so
8 there's additional relief requested for minor
9 side yard relief. I just wanted to make sure
10 that was in front of you.

11 CHAIRMAN JORDAN: Yes. I already
12 have side yard. I have side yard.

13 MR. HORSEY: Thank you.

14 CHAIRMAN JORDAN: Then we'll turn
15 to Office of Planning. Mr. Cochran, anything
16 else?

17 MR. COCHRAN: No sir. I think I've
18 already said enough.

19 CHAIRMAN JORDAN: Okay. Anyone
20 here from D-DOT? We do have a letter of no
21 objection from D-DOT in this matter. Anyone
22 here from ANC-3C is it? 3C? We do have a

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1 recommendation from ANC-3C to approve this.
2 Is there anyone here wishing to speak in support
3 of the application? Anyone in support?
4 Anyone in opposition? Anyone in opposition?

5 Then we will close the hearing based
6 upon the record already before us. Board ready
7 to deliberate? I would move the amended
8 relief under 18826 be granted.

9 COMMISSIONER HOOD: Second.

10 CHAIRMAN JORDAN: Motion made and
11 second. Any further discussion? All those
12 in favor of the motion aye. Those opposed nay.

13 (VOTE TAKEN)

14 The motion carries. Mr. Moy?

15 MR. MOY: Staff would record the
16 vote as 5-0. This on the motion of Chairman
17 Jordan to approve the application for the
18 amended relief. And I'm going to go through
19 this relief very quickly as I understood it, Mr.
20 Chairman.

21 Special exception 223, that being
22 the side yard requirements under section 405.9.

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1 The section was waived to permit under section
2 202.10 and the non-conforming 2001.3.

3 Second the motion, Mr. Hinkle. Also
4 in support Mr. Hood, Ms. Heath and Chairperson
5 Allen. The motion carries.

6 CHAIRMAN JORDAN: Okay. Thank
7 you. Summary order please.

8 MR. MOY: Thank you, sir.

9 MR. HORSEY: Thank you, Mr.
10 Chairman.

11 CHAIRMAN JORDAN: Okay. Mr. Moy,
12 let's keep rocking and rolling.

13 MR. MOY: The next application on
14 deck is 18779 of Christine Trankiem. This is a
15 request, Mr. Chairman, from the applicant for
16 relief as advertised variances from lot
17 occupancy, rear yard and non-conforming
18 structure to an existing one-family row
19 dwelling. This is at 2761 Woodley Place, N.W.

20 CHAIRMAN JORDAN: Parties for
21 18779 please? Would you identify yourself?

22 MS. TRANKIEM: My name is

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1 Christine--

2 CHAIRMAN JORDAN: You've got to
3 push the button and you'll get a bright
4 glowing-- it says push. See that?

5 MR. TRANKIEM: Thank you. I'm
6 Christina Trankiem, I'm the property owner.

7 CHAIRMAN JORDAN: Okay. This is
8 one where you got a lift. I know I have concerns
9 and OP has concerns about how this property is
10 actually unique or has a special situation
11 which the Board needs to consider to grant you
12 the relief that you requested. And ANC is not
13 here but that's okay, we can work with that.

14 MS. TRANKIEM: I do have a copy of
15 their official report if the Board would like
16 that.

17 CHAIRMAN JORDAN: I think we have
18 that. We do have that. The only issue with
19 that is that they voted in support of a special
20 exception and this is a variance request. So
21 anyway right off the bat you have to show us that
22 you can meet the test required for variance

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1 relief on the property.

2 Board, anything that we need to
3 specifically drill down with this applicant?

4 Okay. So it's on you.

5 I'm going to tell you right now from
6 what we see and what you relied on is an issue
7 that you've made the statement that your lot is
8 smaller and narrower than others and then you
9 submitted the overall site plan here that shows
10 your property really is not. So it's on you to
11 lift it.

12 MS. TRANKIEM: I'm sorry? That
13 my property is not narrower, sir?

14 CHAIRMAN JORDAN: You need to show
15 us to prove to us that the property has an
16 exceptional situation or condition that meets
17 at least the first prong of the test and then
18 getting to the second prong of the test for
19 variance relief.

20 And I don't know, have you had
21 conversation with the applicant?

22 MR. MORDFIN: Good morning. I'm

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1 Stephen Mordfin with the Office of Planning,
2 and I have had conversations with the applicant
3 and the applicant did submit some additional
4 information.

5 And when the Office of Planning
6 reviewed that and when you look at Woodley Place
7 on the square, the lots that are on that side
8 of the square, just before the subject property
9 it does start -- or several lots before. They
10 do get smaller. It's not a narrow property
11 because it does meet that requirement for the
12 R-4. But it is smaller, it's smaller than
13 what's required in the R-4 and it's smaller than
14 most of the lots as you go all the way down that
15 entire block, except for the last few at the
16 end.

17 CHAIRMAN JORDAN: Aren't the ones
18 on both sides of the property the same size?

19 MR. MORDFIN: No, they're not.

20 CHAIRMAN JORDAN: What's the -- we
21 don't have any measurement. It appears to be.

22 MR. MORDFIN: Yes, the one to the

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1 south is larger and they get larger as you go
2 to the south until you go down about five lots
3 down and then they're all approximately the
4 same size all the way down to Woodley Road.

5 But as you go north, the last few
6 lots before you hit the ones that front on
7 Cathedral Avenue get smaller as you go up to the
8 alley there. So this one is smaller than most
9 of those lots.

10 So based on that it does make it more
11 difficult to put a deck on this one. It's about
12 1641 square feet I think, yes, which is less
13 than the 1800. Most of the lots on that side
14 are in excess of the minimum requirement. This
15 one is not.

16 So based on that, and it's a deck
17 which is something that's open. It's not an
18 enclosed room that the applicant is proposing,
19 it's an open deck, similar to the ones that on
20 either side of this and on most of the lots on
21 that side of Woodley Place the Office of
22 Planning found that is a unique condition that

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1 would not cause undue hardship or detriment to
2 the public good or to the zoning regulations
3 because it would allow the applicant to use her
4 rear yard off the main level of the house.

5 So based on all of that and from the
6 submission that the applicant added to the
7 file, the Office of Planning would recommend
8 approval of this application.

9 CHAIRMAN JORDAN: Okay. So
10 that's a reversal?

11 MR. MORDFIN: Yes, it is.

12 CHAIRMAN JORDAN: Because I guess
13 I'm not seeing -- you actually have the
14 measurements or something, or are you still
15 doing a visual from the exhibit that was
16 submitted with the application?

17 MR. MORDFIN: I had looked at the
18 measurements online. I didn't bring them. I
19 did bring with me a map that shows where it
20 starts to narrow. It shows the entire square and
21 it shows the properties on Woodley Place on the
22 east side of Woodley place.

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1 CHAIRMAN JORDAN: Now the decks
2 that are on the north and south side of this
3 property, were they properly permitted?

4 MR. MORDFIN: I did not find any
5 evidence of any permits that were issued for
6 those decks.

7 CHAIRMAN JORDAN: Got you. But
8 you actually went out and did visual -- or did
9 you just do it on a computer?

10 MR. MORDFIN: I did this on the
11 computer.

12 CHAIRMAN JORDAN: But you did look
13 and so you can say that this lot is a bit
14 smaller?

15 MR. MORDFIN: Yes, it is.

16 CHAIRMAN JORDAN: And we just
17 don't know how much smaller. All right.

18 MR. MORDFIN: Well, when you get
19 further down they are in excess of the minimum
20 requirement. They go up to around 2000 square
21 feet, three or four lots to the south, they're
22 in excess of 2000 square feet and this one is

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1 1641.

2 CHAIRMAN JORDAN: And the
3 practical difficulty here?

4 MR. MORDFIN: The practical
5 difficulty is in the use of the rear yard.
6 Because it gets smaller the applicant is unable
7 to add a deck to her rear yard that comes off
8 the main level of the house because of the way
9 the topography goes. In the back it's much
10 lower than it is in the front because the topo
11 goes down as you go towards the park and so this
12 allows her to utilize something off the main
13 level of the house rather than the basement for
14 her rear yard.

15 CHAIRMAN JORDAN: Well, she could
16 have actually done a matter of right a smaller
17 deck.

18 MR. MORDFIN: Yes, she could have.
19 She could have done a smaller deck.

20 CHAIRMAN JORDAN: All right.
21 Seven feet above grade. Board, any issues, any
22 other discussion? We take Mr. Mordfin as

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1 providing the testimony for the applicant and
2 submitting to the Office of Planning.

3 All right. Board, anything else you
4 want to say in support of this application? I
5 think Office of Planning has been carrying your
6 lift here.

7 MS. TRANKIEM: I appreciate that.
8 We had spoken several times.

9 CHAIRMAN JORDAN: Board, anything
10 else we need to hear on this? Are you okay?
11 Are you sure?

12 All right. So then we'll skip Office
13 of Planning. I don't think there's anything
14 else you need to add here. I think you've
15 carried the lift and we understand the position
16 and we certainly give great weight and
17 deference to the Office of Planning here.

18 We don't have the ability to
19 actually go out and do the measurements
20 ourselves, we just know that the documentation
21 that we see didn't necessarily support it but
22 we certainly rely on Office of Planning to do

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1 that. And the representation here by you is
2 that this property is smaller and has some
3 uniqueness in regards to the other properties
4 in that there is a practical difficulty so we
5 accept that. That's your testimony, right?

6 MR. MORDFIN: Yes.

7 CHAIRMAN JORDAN: Okay. All
8 right. We have a letter of no objection from
9 the Department of Transportation. We do have
10 a letter from ANC -- anyone here from ANC-3C?
11 Busy ANC today. ANC-3C?

12 It talks in terms of supporting the
13 requested relief for a special exception. I
14 don't know where that area is but we'll take
15 that as some guidance to the Board that since
16 the overall plans haven't changed that they
17 support your requested relief. This could be
18 a typo or whatever, we just don't know.

19 Anyone here wishing to speak in
20 support of the application? Anyone in
21 support? Yes, please come forward. Did you
22 give your witness cards to the court reporter?

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1 Well, why don't you tell us who you are and then
2 I want you to complete it and give it to the
3 court reporter.

4 DR. FRECKNALL: Mr. Chairman, my
5 name is Dr. Peter Frecknall and I live at 2515
6 Woodley Road, N.W. That's on the corner of
7 Woodley Road and Woodley Place. So we're a
8 neighbor.

9 The only thing I have to add really
10 is that it seemed like there was a little
11 confusion about do the drawings accurately
12 reflect what you would see if you went there.
13 And we walk back there regularly with the dogs.

14 This house is almost an anachronism
15 when you look at the line from the back in that
16 it has no deck. Every other house has a deck.
17 The decks are fairly uniform in how far they
18 come back from the houses and the line does
19 indeed get I guess deeper is the right word as
20 you go north. No, deeper as you go south and
21 shallower as you go north from the front of the
22 house to the back of the house,

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1 CHAIRMAN JORDAN: Okay.
2 Appreciate that. Anything else you want to say
3 to the Board?

4 DR. FRECKENHALL: No.

5 CHAIRMAN JORDAN: Okay. Thank
6 you. Appreciate it. Just be sure to give the
7 witness cards to the court reporter.

8 Any other person wishing to speak in
9 support of this application? Is there anyone
10 wishing to speak in opposition? Anyone in
11 opposition? All right. Then we would
12 normally turn back to the applicant for any
13 rebuttal or closing but I think we close upon
14 the record unless there's something you think
15 you need to say to the Board?

16 COMMISSIONER HEATH: No, thank
17 you.

18 CHAIRMAN JORDAN: So we'll close
19 this hearing. Is the Board ready to deliberate
20 on this matter? Any discussion? Any motion?
21 All right. I move that we grant the relief
22 requested in this matter 18779.

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1 COMMISSIONER HEATH: Second.

2 CHAIRMAN JORDAN: Motion made and
3 second. Any discussion?

4 COMMISSIONER HINKLE: Mr. Chair,
5 I just want to note that I appreciate the
6 letters of support as well from her neighbor.
7 It appears that neighbors on each side have
8 written letters of support.

9 CHAIRMAN JORDAN: Okay. Thank
10 you. So all those in favor of the motion, aye.
11 Those opposed nay.

12 (VOTE TAKEN)

13 CHAIRMAN JORDAN: The motion
14 carries. Mr. Moy?

15 MR. MOY: Yes sir. Staff would
16 record the vote as 5-0. This on a motion of
17 Chairman Jordan to approve the application for
18 the relief requested which are the variances to
19 lot occupancy, rear yard and non-conforming
20 use. Second the motion Ms. Heath; also in
21 support Mr. Hood, Vice Chairperson and Mr.
22 Hinkle. Motion carries, Mr. Chairman.

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1 CHAIRMAN JORDAN: All right.

2 Thank you. Summary order please.

3 MR. MOY: Thank you, sir.

4 MR. TRANKIEM: I'd like to thank
5 the Board.

6 CHAIRMAN JORDAN: You're welcome.

7 Thank you. Next case is what, 18802, Mr. Moy?

8 MR. MOY: Yes sir. Application
9 No. 18802. This is the application of
10 Newletterman Associates LLC. This is a
11 request for a special exception as advertised
12 to allow office use as publicly noticed under
13 section 508 in the DC/SP-2 district.

14 CHAIRMAN JORDAN: Okay. Would
15 you identify yourself please?

16 MR. LITMAN: I'm Arnie Litman. I'm
17 a member of the Newletterman Associates LLC.

18 MR. MORRIS: My name is F. William
19 Morris with Morris Architects.

20 MR. RANDALL: Robert Randall. I'm
21 a member of the [inaudible] Association.

22 CHAIRMAN JORDAN: Very good.

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1 Thank you. Have you all turned in witness
2 cards to the court reporter?

3 ALL: Yes.

4 CHAIRMAN JORDAN: Okay. Good.
5 Thank you. A couple of issues right off the
6 bat here. Is there an affidavit of posting?

7 MR. LITMAN: Yes.

8 CHAIRMAN JORDAN: Do we have it in
9 our file?

10 MR. LITMAN: Mr. Moy has it.

11 CHAIRMAN JORDAN: Okay. When was
12 that turned in?

13 MR. MOY: That was just turned in
14 this morning, Mr. Chairman.

15 CHAIRMAN JORDAN: Okay. Are you
16 comfortable with this affidavit of posting?
17 Okay. All right. So first of all, let me
18 ask, what kind of office what is going to be
19 office use in this proposed office?

20 MR. RANDALL: This has always been
21 a commercial office used for that. When the
22 building was originally built it was used as a

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1 model and a leasing office and since then it's
2 had several uses all of them commercial.

3 It's been a graphic printer, it's
4 been a therapist's office--

5 CHAIRMAN JORDAN: I think my
6 question is a lot simpler than that. What is
7 going into the space?

8 MR. RANDALL: We don't have it
9 leased as this point in time. It is going to be
10 a commercial use. An office use of some kind.

11 CHAIRMAN JORDAN: I guess that's
12 why it wasn't in here. Right? Okay.

13 MR. RANDALL: Can't lease it
14 without permission. It has been leased in the
15 past because we always believed it be a
16 commercial unit and for the condo documents it
17 says that's it's a commercial unit and had been
18 used as such.

19 CHAIRMAN JORDAN: I see that has
20 been the history. We're pretty much up on the
21 history of the property but it didn't talk about
22 what was actually going in there. Have you had

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1 a conversation with the ANC and your neighbors
2 in properties around this property?

3 MR. RANDALL: Yes, we've had two
4 ANC hearings and there was absolutely no
5 opposition at either of those meetings.

6 CHAIRMAN JORDAN: One where they
7 voted 8-0 not support it?

8 MR. RANDALL: Well, it was the
9 support for lack of information and some due
10 diligence that they wanted us to extend.

11 CHAIRMAN JORDAN: So when did that
12 occur? Did you give them the information?

13 MR. RANDALL: Yes. At the second
14 hearing they approved it unanimously. What we
15 had done originally was posted the notice,
16 contacted the tenants and owners of the
17 building. We've had two separate mailings that
18 went out and the two hearings at the ANC.

19 CHAIRMAN JORDAN: We have nothing
20 from the ANC indicating that there's-- there
21 was did you say?

22 COMMISSIONER HOOD: No, no. Go

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1 ahead.

2 CHAIRMAN JORDAN: We have a letter
3 of July 2014 they voted 8-0 in opposition.

4 MR. RANDALL: We have a letter
5 here, I don't know the mechanics at ANC gives
6 it to you but we have a letter here from the ANC
7 approving it.

8 CHAIRMAN JORDAN: It's on the
9 applicant to make sure our files have
10 everything that you have. The ANC sends it in
11 but you should make sure that the documents--
12 so can we see that letter please if you have it?
13 That would be the amended letter, is that what
14 you're informing us?

15 MR. RANDALL: Yes.

16 CHAIRMAN JORDAN: Thank you. And
17 have you talked to the other neighboring
18 properties around this property?

19 MR. RANDALL: I've talked to the
20 Boston House condominium president and to the
21 building to the left which is the--

22 MR. LITMAN: The Brookings

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1 Institution is to the west of this property and
2 Johns Hopkins University offices is adjacent to
3 the east of this property. Both office users.

4 CHAIRMAN JORDAN: Okay. What was
5 their state of mind on this?

6 MR. RANDALL: They had no
7 opposition, no position. They didn't really
8 care, didn't want to get involved.

9 CHAIRMAN JORDAN: Okay. All
10 right. I think the request is minimal also and
11 I know there's been history. I think just in
12 the interim it became this janitorial space for
13 a while

14 MR. RANDALL: There's a
15 janitorial room across the hall. This is about
16 850 square feet. It's had multiple uses over
17 the years.

18 CHAIRMAN JORDAN: Okay. Let's
19 give that back to the applicant and let the
20 applicant then property document the record,
21 make copies and document the record because it
22 needs to go into the file.

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1 All right. Board, any other
2 questions about this matter?

3 COMMISSIONER HOOD: I would just ask
4 because I think it's critical because the
5 letter we have from July 14th was very critical
6 in this piece. I would agree with the
7 Chairman, the 847 square feet or 850, whatever
8 is it, is very minimal.

9 But when I look at this I see that
10 the ANC had all these issues on the 14th and I'm
11 hearing something different days. We actually
12 look at these a little bit before the hearings.
13 So my question is why was that not uploaded?

14 CHAIRMAN JORDAN: What was the
15 date of that letter?

16 COMMISSIONER HOOD: Oh that's
17 August. The one we have is July 14th but that
18 is August 19th. Why was that not uploaded into
19 the system?

20 MR. LITMAN: This indicates that
21 it was sent to the BZA, to Richard Nero, on that
22 date and I believe I checked it yesterday to see

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1 if it was there. I believe I saw that in the
2 record but I could be mistaken.

3 CHAIRMAN JORDAN: It's not in our
4 records.

5 MR. LITMAN: Okay.

6 COMMISSIONER HOOD: Thank you.

7 CHAIRMAN JORDAN: And it's
8 important and sometimes these things happen and
9 we understand that but the Board certainly
10 spends a lot of time before these hearings going
11 through every document, you know, we just don't
12 kind of look at it here. We spend at least, you
13 know, eight hours, sometimes 12 or even more
14 hours, looking at these files, looking at these
15 cases and try to get a better understanding for
16 these matters.

17 That's okay, we know how these
18 things happened. Let's just make sure that it's
19 in the record.

20 Let's turn it in to the Office of
21 Planning if there's anything else that--

22 MS. BROWN-ROBERTS: Good morning,

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1 Mr. Chairman and Members of the BZA. We're
2 still in support of this application. We think
3 they meet all the requirements of section 508.

4 Regarding the ANC, I did speak to
5 them I think the day after they voted in support
6 and they did say to me, and actually they did
7 send me a copy of the letter and they did state
8 their concerns that they had outlined in their
9 former letter were addressed by the applicant.
10 So I was confident that they did take a vote.

11 I'm not sure why it didn't get into
12 the record but they did send me a copy of it
13 also, so something happened in between there.
14 But that's it. Thank you.

15 CHAIRMAN JORDAN: Thank you for
16 that additional information. Board, any
17 questions of Office of Planning? I'm assuming
18 there's no one from the Department of
19 Transportation here. Correct? Okay. We do
20 have a letter of no objection to the relief from
21 the Department of Transportation.

22 Is there a representative of

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1 ANC-2B? We have seen the letter now that was
2 a revised vote taken by ANC-2B who voted in
3 support of this application to which we give
4 great weight.

5 Is anyone here wishing to speak in
6 support of this application? In support?
7 Anyone wishing to speak in opposition? Yes, go
8 ahead.

9 MR. RANDALL: Yes. Thank you.
10 My name is Robert Randall. I am--

11 CHAIRMAN JORDAN: Can you speak
12 closer to the microphone please. Thank you. Is
13 it on? I can hear him but I think it's at a
14 distance. There should be a bright glowing
15 green light.

16 MR. RANDALL: Okay. I see it.
17 Thank you. My name is Robert Randall. I'm a
18 resident and member of the Winthrop Condominium
19 Association and was briefly on the Board of
20 Directors.

21 It appears that Newletterman
22 Associates was formed by two real estate

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1 operators in D.C. to take over the condominium
2 and turn it into more of a slum property. And
3 I had asked the original developers, the
4 Calamaris family, extended family, to come here
5 so he could make a more authoritative
6 presentation but they declined to invest the
7 time and the money to prepare anything.

8 So just going from the public
9 record, the building got a building permit in
10 1940 as an apartment house with 142 residential
11 units, what I presume was a rental office and
12 so on.

13 And then operates that way -- this
14 is all from the hearsay if you will so sorry --

15 CHAIRMAN JORDAN: I just want to
16 remind you, you have three minutes so you've
17 probably got another two minutes left but go
18 ahead.

19 MR. RANDALL: Okay. Well, at any
20 rate it was built during World War II with the
21 material shortages allocations and so on which
22 caused some problems.

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1 And there was a great increase in
2 employment in Washington during that time and
3 with the regulatory agencies price and controls
4 and the Pentagon was built and the military
5 vastly expanded as we got into World War II.

6 So all of the units are small. There
7 are I think 32 one-bedroom units, of which I
8 have one, and half of them are sort of junior
9 one-bedrooms and half are somewhat larger ones
10 such as the one I have. And the rest are all
11 efficiencies of one kind or another.

12 And then we went from there into the
13 depression and it was rent controlled during
14 most of the time.

15 So at any rate, when Newsletterman,
16 the Calamaris ownership interest began to break
17 up going into the second generation after 1940,
18 it had been fairly successful in a number of
19 other buildings. This is the only one that was
20 made into a condominium.

21 CHAIRMAN JORDAN: You have 17--
22 It's over? Okay. Let's ask you just to begin

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1 to wrap up. You have 30 seconds to wrap up for
2 us please.

3 MR. RANDALL: Wel, I have
4 questions about the condition of the common
5 elements and so on, and would ask that as a
6 condition of approval that you ask the
7 applicant to have an engineering evaluation of
8 the common elements, their suitability, their
9 expected life and durability and how long the
10 thing-- The problem from the Zoning is that--

11 CHAIRMAN JORDAN: You're now over
12 your time and I gave you some extra time and I
13 understand your concern. We really appreciate
14 you coming down but we have other things on our
15 docket. And what we can request the applicant
16 has to be germane to the relief requested.

17 We understand your concern and your
18 issues but this is not the forum for that. And
19 we understand there's some issues and you have
20 some concerns and you probably should talk to
21 the building management or talk with -- if you
22 think there's some safety issues -- Department

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1 of Consumer Regulatory Affairs.

2 However, what you ask this Board to
3 do regarding the relief that's requested it's
4 not really germane to this relief and I would
5 find it unreasonable to put it there. But we
6 appreciate you coming down and speaking with
7 us. Is there anybody else here wishing to
8 speak--

9 COMMISSIONER HOOD: Mr. Chairman,
10 I have a question for the gentleman if you don't
11 mind.

12 CHAIRMAN JORDAN: I think I just
13 turned off your microphone. Go ahead.

14 COMMISSIONER HOOD: You did? I'm
15 used to turning them off, I'm not used to being
16 turned off but it works both ways I guess.

17 I was just curious and I didn't pick
18 this up. Were you representing the Board
19 earlier?

20 MR. RANDALL: No, I'm not and I'm
21 no longer on the Board.

22 COMMISSIONER HOOD: Earlier you--

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1 MR. RANDALL: I was on the Board
2 some time ago.

3 COMMISSIONER HOOD: Okay. I just
4 wanted to make sure. Okay. Thank you.

5 CHAIRMAN JORDAN: Anyone else
6 wishing to speak in opposition? Anyone in
7 opposition? Then we will turn back to the
8 applicant for any rebuttal if you think there's
9 any rebuttal that's necessary or closing.
10 Okay. Then let's close the hearing based upon
11 the record that we have before us. Anyone want
12 to make a motion? I mean you don't have to
13 wait to second, you can make the motions if you
14 like.

15 Okay. Then I move that we grant the
16 relief requested under 18802.

17 VICE CHAIR ALLEN: Second.

18 CHAIRMAN JORDAN: Motion made and
19 second. Discussion? All those in favor say
20 aye. Those opposed nay.

21 (VOTE TAKEN)

22 The motion carries. Mr. Moy,

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1 please.

2 MR. MOY: Yes sir. Staff would
3 record the vote as 5-0. This on a motion of
4 Chairman Jordan to approve the application
5 requesting special exception relief under
6 Section 508. Also seconded Vice Chairperson
7 Allen. Also in support Mr. Hood, Ms. Heath and
8 Mr. Hinkle. Motion carries 5-0, Mr. Chairman.

9 CHAIRMAN JORDAN: Summary order
10 please.

11 MR. MOY: Thank you.

12 CHAIRMAN JORDAN: Thank you very
13 much. Thank you all for coming down.

14 MR. LITMAN: Thank you, Chairman
15 Jordan. Thank you very much.

16 MR. WILLIAMS: Thank you.

17 CHAIRMAN JORDAN: Okay. Let's
18 tee up 18793 but we're going to take a 10-minute
19 before that and then we'll deal with 18793.
20 That's our last case, correct. Okay. Take a
21 10-minute stretch. All right.

22 (A BRIEF RECESS WAS TAKEN)

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1 CHAIRMAN JORDAN: Okay. Mr. Moy,
2 is there an issue? Can you hear? Okay. Thank
3 you.

4 MR. MOY: This is appeal No. 18793
5 of the Advisory Neighborhood Commission 2A.
6 Mr. Chairman, this is an appeal of a February
7 28, 2014 decision by the Zoning Administrator
8 to permit the installation of signs on an
9 under-construction Hilton Garden Inn at 2201
10 through 2213 M Street, N.W.

11 I'm also in receipt, Mr. Chairman,
12 of what appears to be plans, I don't know if
13 they're revised plans, from the-- no?

14 Well, anyways we'll cover that when
15 they identify themselves. As well as written
16 testimony from ANC-2A and the testimony of 22
17 West. That completes the briefing, Mr.
18 Chairman.

19 CHAIRMAN JORDAN: All right.
20 Thank you, Mr. Moy. Would you please identify
21 yourselves?

22 MS. BRAY: Kinley Bray on behalf

1 of the appellant 22 West.

2 MS. HARMON: Florence Harmon on
3 behalf of ANC-2A.

4 MR. MITCHELL: Dennis Mitchell,
5 owner's representative for the Hilton Garden
6 Inn OTO Development.

7 CHAIRMAN JORDAN: Your name
8 again?

9 MR. MITCHELL: Dennis Mitchell.

10 CHAIRMAN JORDAN: Okay.

11 MR. COLLINS: Christopher Collins
12 with Holland & Knight representing the property
13 owner.

14 MR. LEGRANT: Matthew LeGrant,
15 I'm the Zoning Administrator DCRA.

16 MR. POSTULKA: John Postulka,
17 Assistant Attorney General representing DCRA.

18 MS. BLUMENTHAL: I am Sally
19 Blumenthal. I am the president of the Board of
20 Directors of 22 West. Appellant.

21 CHAIRMAN JORDAN: Okay. All
22 right. Good. I understand what we have

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1 before us is a motion to dismiss alleging that
2 the appeal was untimely. We'll deal with that
3 issue first. Also for the record thank you
4 Vice Chair. I need to make for the record that
5 Mr. Hinkle is not with us for this hearing. He
6 actually recused himself due to a potential
7 conflict of interest in hearing this matter and
8 the Board accepted that.

9 Okay. So we will take either
10 testimony of hearing on the motion to dismiss
11 first regarding this matter. How much time do
12 you think you're going to need to argue the
13 motion to dismiss?

14 MR. COLLINS: Probably 10
15 minutes.

16 CHAIRMAN JORDAN: Okay. And Ms.
17 Bray, 10 minutes?

18 MS. BRAY: Ten.

19 CHAIRMAN JORDAN: So we're do
20 equal 10 and 10 on this. Very good. Please
21 proceed.

22 MR. COLLINS: Thank you, Mr.

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1 Chair. We have filed a motion to dismiss the
2 appeal. It's in the record and I won't go
3 through every bit of it but the key issue is that
4 an appeal must be filed within 60 days of the
5 date that an appellant knew or should have known
6 of a decision, a zoning decision to approve and
7 an appeal must be filed no more than 10 days
8 after a building is under roof.

9 In this case the original appeal was
10 from the February 28th decision of the Zoning
11 Administrator. That's a February 28th email.
12 The revised, if you will, statement of the--

13 CHAIRMAN JORDAN: Did you say
14 February 20th or February 28th?

15 MR. COLLINS: 28th. February
16 28th. The pre-hearing statement identifies the
17 date as February 10th but regardless of which
18 date you choose, regardless of which you
19 choose, either February 28th or February 10th
20 as the date from which the document that they
21 appealed.

22 CHAIRMAN JORDAN: Okay. Help me

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1 because I think that's just key for me. The
2 February 28th and the date that this was filed
3 was May 28th, is that the date?

4 MS. BRAY: April 28th.

5 CHAIRMAN JORDAN: April 28th. Is
6 that not 58 or 59 days?

7 MR. HOLLAND: Well, our motion to
8 dismiss goes into that in quite a lot of detail,
9 sir, and I'll just summarize that if I can.

10 CHAIRMAN JORDAN: No, answer that
11 for me. I need to know.

12 MR. HOLLAND: Yes, April 28th is
13 approximately 60 days after February 28th but
14 February 28th is not--

15 CHAIRMAN JORDAN: I understand
16 all the argument. You said something, "even if
17 we took" and that to me means if we exclude all
18 your other arguments and just took it from the
19 February 28th date, it still would be outside.

20 MR. COLLINS: No, I'm sorry.
21 That's not my argument. My argument is
22 regardless of whether the appellants are

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1 sticking with the document they're appealing is
2 the February 28th document or the February 10th
3 document, they're still out of time because
4 neither one of those constituted the zoning
5 decision to approve the sign.

6 The zoning decision to approve the
7 sign was in the PUD. The PUD order was approved
8 and issued on February 3rd of 2012, the
9 appellants were both involved in that case.
10 The ANC was a party and 22 West was a person
11 involved in that case.

12 The order approved the sign is very
13 clear, we've gone through it in our motion to
14 dismiss. The basis of that is the Zoning
15 Administrator has made his position clear.
16 The building permit was issued on October 24,
17 2012. If you don't take the PUD approval as
18 the trigger for the 60 days, then you should
19 take the building permit issuance of October
20 24, 2012 as the date of permit issuance.

21 The signs were shown on the building
22 permit application drawings and I've given Mr.

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1 Moy this morning a more clear copy of the
2 billing permit drawing with the Zoning
3 Administrator stamp on it from 2012 and, as the
4 case law says, when a date starts the 60 day
5 clock for appeal, the appellants have a duty,
6 they have a duty of due diligence to examine
7 whether there is an issue here.

8 The appellants were part of the PUD.
9 This was an issue that they raised in the PUD
10 and you would think that would have maybe gone
11 through and followed the case to see what was
12 going on. Your previous decision said that
13 they have a duty of due diligence to do that.

14 Construction was underway between
15 August of 2012 and May of 2014. The permit was
16 posted on the site after issuance. Again,
17 looking at the permit having due diligence
18 being able to go and take a look at the permit
19 documents that were on file at DCRA that clearly
20 show the sign as approved by the Zoning
21 Administrator on the plans.

22 The hotel was under roof on August

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1 1, 2013. The appellants had 10 days from that
2 date to file an appeal.

3 On December 31, 2013, appellant 22
4 West, or shortly before that time, saw brackets
5 and wiring for the signage and made an inquiry
6 to me -- owner's counsel -- not to the Zoning
7 Administrator. They made it to me.

8 CHAIRMAN JORDAN: And what date
9 was that?

10 MR. COLLINS: That was December 31
11 of 2013.

12 CHAIRMAN JORDAN: Okay.

13 MR. COLLINS: And that's in the
14 record as well.

15 They saw the sign, the brackets and
16 the wiring and made inquiry to me and not to the
17 Zoning Administrator's Office. I responded to
18 them on February 10th after doing my due
19 diligence to make sure that there was no
20 question in the Zoning Administrator's mind
21 that what he had previously approved was
22 somehow going to be second guessed or reversed

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1 or otherwise questioned.

2 CHAIRMAN JORDAN: Let me ask you a
3 question.

4 MR. COLLINS: Yes.

5 CHAIRMAN JORDAN: Seeing the
6 brackets, if I saw the brackets I'd know a
7 sign's going there.

8 MR. COLLINS: Yes. Well, their
9 email said that they appear to be brackets and
10 wiring for a sign.

11 And so if you don't accept the PUD
12 order as the date for the 60-day clock. If you
13 don't accept the permit building issuance as
14 the 60-day clock starting date, if you don't
15 accept the posting of the building permit as
16 beginning the 60-day clock, if you don't accept
17 the hotel being under roof as the 10-day clock,
18 you certainly would look to see that the
19 appellants had actual knowledge that there are
20 brackets and wiring for a sign going up. And
21 that should have started the 60-day clock.

22 I responded to them on February 10th

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1 in language that is unequivocal saying that the
2 zoning authorities have approved the sign. The
3 sign is not in violation of the PUD order.

4 Now, if you don't accept any one of
5 those previous times as the date to begin the
6 clock for appeal, my indication to them on
7 February 10th that the zoning authorities have
8 approved the sign and the sign is not a
9 violation of the PUD order, that would have
10 started the 60-day clock.

11 They have again under the rulings of
12 this Board they have an obligation to do due
13 diligence.

14 Now also an appeal, to file an
15 appeal and this Board has said this on several
16 occasions, you don't need to know the rationale
17 for the decision, you just need to know that a
18 decision was made.

19 The absolute latest date for the
20 appeal clock to have started was February 10th.
21 On February 12th they wrote to the Zoning
22 Administrator requesting enforcement and sent

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1 a copy to the ANC single member district
2 commissioner. On the 15th the ANC, after a
3 briefing by 22 West, February 15th of this year,
4 2014, the ANC adopted a resolution asking the
5 Zoning Administrator to enforce the PUD order.
6 So both parties were on notice by then that
7 there was an issue.

8 The Zoning Administrator's
9 response on the 28th of February that the sign
10 is not a violation of the PUD order so no
11 enforcement is necessary, that was simply a
12 subsequent DCRA correspondence. That was not a
13 ruling on the sign.

14 By March 19th the ANC had adopted
15 another resolution joining in the appeal by 22
16 West but the appeal wasn't filed until April
17 28th.

18 The appeal was filed 27 months after
19 the PUD approval, 18 months after the issuance
20 of the building permit which included the
21 approved sign on the permit drawings. Nine
22 months after the hotel was under roof, four

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1 months after 22 West saw the brackets and wiring
2 for the approved sign and made their inquiry to
3 owner's counsel, 77 days after being informed
4 by owner's counsel on February 10th that the
5 brackets and wiring were indeed for the
6 installation of the sign and the sign was
7 approved by the zoning authorities, 75 days
8 after 22 West wrote to the Zoning Administrator
9 with a copy to the ANC requesting enforcement
10 and 72 days after the ANC adopted the first of
11 their two resolutions objecting to the
12 installation of the sign.

13 Neither the February 10th letter
14 from the Zoning Administrator nor the February
15 28th email was a decision to approve the sign.
16 Knowledge of a decision and knowledge of the
17 rationale for the decision is what counts. An
18 explanation of a decision and a refusal to take
19 enforcement action is not an appealable
20 determination. This Board has made that ruling
21 in previous cases.

22 Subsequent zoning administrator

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1 correspondence reinforcing the original
2 decision does not change the start date for an
3 appeal, and this Board has made that decision
4 as well, and notice of cases are cited in the
5 documents, in our documents.

6 A party who chooses to engage in
7 other avenues to resolve dispute does not
8 extend the deadline for an appeal of such
9 action. This Board has said that and it's been
10 upheld in appeals by DiBretto and the appeal of
11 Baskin.

12 There is no basis for an extension
13 of time to file an appeal in this case. There
14 are no exceptional circumstances. Even
15 assuming that the February 10th email from
16 owner's counsel, from me, was the start date
17 without conceding that to be the case, it was
18 still not timely. By March 19th both the ANC
19 and 22 West had determined to file an appeal.
20 March 19th and that's Exhibit 5. They did not
21 file the appeal until April 28th.

22 CHAIRMAN JORDAN: I think you're

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1 out of time.

2 MR. COLLINS: Thank you.

3 CHAIRMAN JORDAN: You want to wrap
4 up?

5 MR. COLLINS: And then extension
6 will prejudice the owner. The owner is here and
7 can go through his statements in his
8 declaration if you have any questions on those
9 statements in the declaration.

10 But for all of the reasons that I've
11 stated and the reasons in the owner's motion to
12 dismiss appeal document, this appeal was
13 untimely filed and must be dismissed.

14 CHAIRMAN JORDAN: Thank you.
15 Board, any questions that you want to ask Mr.
16 Collins at this point? Ms. Bray, would you go
17 forward and then we can come back and ask and
18 I don't know if you want to get into -- that's
19 what I always contend, and I've said this to the
20 Zoning Commission, on these matter of appeals
21 really DCRA they're not the real person in the
22 hunt and it should be left as another

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1 jurisdictions between the person who sought the
2 relief, that got the relief, and any other
3 party. So I understand. Please, Ms. Bray.

4 MS. BRAY: Good morning, Mr.
5 Chairman and Members of the Board. Again, my
6 name is Kinley Bray with the law firm of Arent
7 Fox on behalf of appellant 22 West. I'd like to
8 start by directing the--

9 CHAIRMAN JORDAN: I'm sorry. It's
10 10 minutes, you had 11 up there.

11 MR. MOY: Yes, the property owner
12 went over another minute so I equalized it.

13 CHAIRMAN JORDAN: Oh very good.
14 Thank you.

15 MS. BRAY: I'd like to direct the
16 Board's attention to Appendix N of the District
17 of Columbia Building Code. Understanding that
18 the Board does not have jurisdiction over
19 building code matters, I would just simply like
20 to note for the record that a sign pursuant to
21 Title 12 DCMR 101.1 and 101.3 requires a
22 separate permit, and therefore the decision to

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1 issue a building permit is not in and of itself
2 a decision to approve a sign.

3 I have copies of Appendix N and I've
4 submitted them to Mr. Moy for the Board's
5 information.

6 This appeal was initiated 38 days
7 following the issuance of a sign permit by DCRA.
8 And that sign permit was reviewed by zoning as
9 it was required--

10 CHAIRMAN JORDAN: When did you say
11 the sign permit was issued?

12 MS. BRAY: March 21, 2014. That
13 sign permit, which is attached as Exhibit H to
14 appellant's pre-hearing statement, includes
15 the application and the zoning review
16 indication that took place also on the same date
17 the permit was issued, March 21, 2014, along
18 with a notation that the sign was approved by
19 zoning pursuant to PUD 07-21B and Zoning
20 Administrator letter.

21 By the Zoning Administrator's own
22 admission and by the counsel for intervenor's

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1 own admission, there was a request of the Zoning
2 Administrator to determine that a sign was
3 permitted under the conditions in Order 07-21B
4 of the Zoning Commission.

5 If the building permit approved the
6 construction of a sign, there would be no reason
7 for intervener to seek the interpretation
8 guidance, modification, however you'd like to
9 couch it, of the Zoning Administrator. They
10 would have the ability to proceed.

11 So it is really absurd at this point
12 to argue that a building permit which was issued
13 in October of 2012 decided an issue that was
14 brought by the intervener to the Zoning
15 Administrator in February of 2014.

16 The question that we have appealed
17 is whether the Zoning Administrator's
18 interpretation of Order 07-21B allows a sign in
19 this particular location and, secondarily,
20 whether multiple signs are allowed by the
21 commission's order.

22 It was the action of the Zoning

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1 Administrator on February 28, 2014 in sending
2 a copy of that determination to Ms. Blumenthal
3 on behalf of 22 West that triggered the time for
4 filing the appeal.

5 And I should also note for the
6 record that--

7 CHAIRMAN JORDAN: Is it your
8 argument that the appeal would be timely if you
9 use the March 21st date and not the February?

10 MS. BRAY: Absolutely. Under both
11 Banham and Baskin, I think these are two
12 separately appealable decisions but certainly
13 if we had waited until March 21st and calculated
14 the 60 days from there, we would be on shakier
15 ground.

16 CHAIRMAN JORDAN: But both Banham
17 and Baskin I think economize and they're not
18 hard set in those cases. It really leaves it up
19 to the Board to decide whether or not it knew
20 or should have known.

21 MS. BRAY: That's right.

22 CHAIRMAN JORDAN: So those date

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1 and those time frames let's just say are not
2 hardwired but it's for the Board to interpret
3 and I want to make sure that we're on the same
4 page.

5 MS. BRAY: Sure. We're
6 absolutely on the same page on that Chairman
7 Jordan.

8 In terms of the facts, I think it's
9 important to reiterate exactly what took place
10 here. On December 31, 2013, a property owner
11 who had taken an active role in the case below
12 at the Zoning Commission noticed something that
13 appeared to be contrary to her understanding of
14 what had been approved.

15 She inquired directly of the
16 intervener's counsel and the intervener's
17 counsel responded indicating that he was quote
18 "double-checking" with the zoning authorities
19 to see whether the sign was permitted.

20 CHAIRMAN JORDAN: That's not the
21 February 10th letter?

22 MS. BRAY: No, that is the

1 February 10th email from Christopher Collins to
2 Sally Blumenthal that's included in the
3 statement of appeal.

4 There was no response for six weeks.
5 Upon a second inquiry to Mr. Quinn, Mr. Quinn
6 then said I'm surprised he hasn't got back to
7 you. And on February 10, Ms. Blumenthal receive
8 this email from Mr. Collins saying I was
9 double-checking with the authorities.

10 On February 12th -- I should back up
11 for a second. Ms. Blumenthal is prepared to
12 testify to this in the hearing on the merits but
13 Ms. Blumenthal's next step in undertaking her
14 due diligence was to inquire with Sharon
15 Schellin, the Secretary to the Zoning
16 Commission, as to whether there had been any
17 requests for modification to Case 07-21B.
18 And the answer was no.

19 On February 12th, Ms. Blumenthal
20 inquired of the Zoning Administrator directly
21 and asked whether there had been any
22 modification, requested enforcement and then

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1 closed her email by asking four things.
2 Enforcement of the zoning order; a copy of any
3 documentation of a decision by you quote
4 "zoning" authorities or any other DCRA official
5 that found a sign lighted from within and
6 vertical mounts on the facade as permitted by
7 the Zoning Commission's order, and two other
8 things that were either decisions or directions
9 of the Zoning Administrator.

10 To this direct request the Zoning
11 Administrator responded, "I have previously
12 discussed this issue with Chris Collins of
13 Holland & Knight. Once I conclude my review I
14 will let you know how the order affects the
15 proposed signage."

16 The direct email correspondence
17 from the Zoning Administrator to Ms. Blumenthal
18 indicated that a decision was under review and
19 that a decision had yet to be made. In fact,
20 he says, "I expect to conclude my review by the
21 middle of next week."

22 A week later he sends a similar

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1 email saying, "I'm still reviewing." And a
2 full week later on February 28th, 16 days after
3 Ms. Blumenthal's initial inquiry he sends a
4 copy of a determination dated February 10, two
5 days prior to her inquiry, asking for a copy of
6 any decision that existed, interpreting the
7 zoning commission's order to permit multiple
8 signs or the sign of the type 22 West was
9 specifically concerned about when it testified
10 at the hearing below.

11 There is absolutely no rational way
12 to look at this and say that either the
13 intervener or the Zoning Administrator
14 believed the sign to have been permitted by the
15 issuance of a building permit in October of
16 2012. The correspondence from the Zoning
17 Administrator was, at best unclear, at worst
18 misleading, about the existence of a decision
19 and as soon as Ms. Blumenthal had knowledge of
20 the decision she appealed. She prepared to
21 appeal and she appealed within 58 days of that
22 decision, the day that decision was sent to her.

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1 Under Baskin, under Banham, under
2 this Board's decisions in Economaides, in
3 Ozabel and in the appeal of ANC-6A, it is clear
4 that the appellant is required to do due
5 diligence, is required to appeal in a timely
6 manner, but the Board's own rules say that an
7 appellant shall have a minimum of 60 days from
8 the date on which they had knowledge or should
9 have had knowledge.

10 And in this case the facts are clear
11 that the appeal was made within 60 days of that
12 knowledge. And therefore we request that the
13 motion be denied for these reasons and for the
14 reasons contained in their written filing filed
15 yesterday in response to the motion to dismiss.

16 CHAIRMAN JORDAN: Very good.
17 Thank you. Board, any questions? Mr.
18 Collins, a three-minute rebuttal.

19 MR. COLLINS: Thank you, Mr.
20 Chair. Very quickly the issuance of the C of
21 O -- both Baskin and Banham and others indicate
22 clearly that in this case they're citing the

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1 issuance of a sign permit was the property
2 trigger or the appeal.

3 However, in the Baskin case the
4 court affirming this Board said that the
5 issuance of a subsequent document like a C of
6 O is not the trigger, it is the prior zoning
7 determination that is the trigger. The C of O
8 simply reaffirms a prior decision that was
9 made, in this case the PUD order was the
10 decision approving the signs. That is clear
11 from the record.

12 The building and sign permits being
13 two separately appealable decisions that Ms.
14 Bray cited then in Baskin, that is not correct.
15 The Banham case did not stand for that at all.
16 The Baskin case was directly contrary to what
17 she's saying. In the Baskin case, as I said,
18 the issuance of a C of O reaffirming an earlier
19 determination does not trigger a new appeal
20 date. The sign permit was simply that -- for
21 the sign.

22 The sign was approved by the PUD

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1 order in the Zoning Commission and it's on the
2 building permit application drawings. The
3 appellant had notice and knowledge of the sign
4 under construction when they saw the brackets
5 and wiring. Their first inquiry was to
6 owner's counsel not to the Zoning
7 Administrator. It's not the kind of due
8 diligence that this Board has required
9 appellants to follow.

10 The Baskin case states clearly that
11 the C of O was not the trigger date for a
12 decision, it was the prior determination and in
13 the Banham case the court actually reserved and
14 did not, specifically did not decide that a
15 determination letter is the basis of an appeal
16 because there was a subsequent building permit
17 that was issued here.

18 There was a subsequent sign permit
19 but the earlier building permit, the earlier
20 Zoning Commission PUD order, the earlier
21 issuance of the building permit, all were
22 decisions approving and reaffirming the sign

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1 approval dating back to the Zoning Commission's
2 order in Exhibit 36 that was part of the Zoning
3 Commission record and was discussed by
4 Commissioner Schlater during the Zoning
5 Commission proceedings where he addressed the
6 ANC issues and was satisfied that the applicant
7 had addressed the ANC's concerns. And that's
8 why the order is written the way it is. Thank
9 you.

10 CHAIRMAN JORDAN: Thank you. We
11 will take under advisement making a rule
12 regarding this and take it with the case and
13 decide how to handle it then.

14 Let's move into the issue on appeal.
15 I think everybody has briefed this matter back
16 and forth so they don't need a whole bunch of
17 time on that. How much time do you think you're
18 going to need, Ms. Bray?

19 MS. BRAY: I think the ANC and 22
20 West collectively needs maybe 25 minutes.

21 CHAIRMAN JORDAN: I was thinking
22 like the 20-minute range.

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1 MS. BRAY: I think we can do that.

2 CHAIRMAN JORDAN: Mr. Collins?

3 MR. COLLINS: The same between
4 five and 10 minutes.

5 CHAIRMAN JORDAN: That's my
6 point. Very good. It's on you to begin please.

7 MS. BRAY: Thank you. Again, as I
8 stated in the argument on the motion to dismiss,
9 the intervener initiated this action by seeking
10 the guidance of the Zoning Administrator which
11 resulted in a determination by the Zoning
12 Administrator that modifies the plain language
13 of the condition 1(a) of Zoning Commission
14 order 07-21B.

15 This was discussed at length at the
16 hearing, the signage, by the ANC, the West End
17 Citizens Association and 22 West as a person in
18 opposition to the case. It was addressed in
19 the proposed findings of fact and conclusions
20 of law submitted by the applicant in that case
21 and the Zoning Commission declined to accept
22 the applicant's language.

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1 Instead, the Zoning Commission
2 adopted the language that was suggested by the
3 ANC and 22 West limiting the ability to have a
4 sign and referred specifically in its
5 discussion in Order 07-21B to the plans A1 and
6 A2 in Exhibit 24 of the record.

7 It was only later that the applicant
8 asked for Exhibit 36 to be referenced in the
9 conclusions. And if you go back and you review
10 the record in this case--

11 CHAIRMAN JORDAN: Let me ask you
12 something because I want to make sure we're
13 clear.

14 MS. BRAY: Yes.

15 CHAIRMAN JORDAN: In Exhibit 24
16 and in those particular pages of 24 they
17 actually had a sign over the door, the Hilton
18 sign, and there was also another green sign that
19 was the restaurant sign?

20 MS. BRAY: There's a restaurant
21 sign. They requested specific flexibility for
22 the restaurant--

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1 CHAIRMAN JORDAN: Right. Right.
2 Okay.

3 MS. BRAY: --but we're talking
4 about the hotel.

5 CHAIRMAN JORDAN: That's why I
6 raised the issue because it sounded like you
7 were saying only one sign and that's what's was
8 in the argument and in the 24 there is also the
9 other signage for the restaurant.

10 MS. BRAY: That's right. That's
11 right. So we have no issue with the idea of
12 restaurant signage. We believe that the
13 applicant asked for flexibility because they
14 didn't know who the restaurateur would be at the
15 time and that is completely acceptable.

16 In fact, it's my understanding that
17 both the ANC and 22 West have had productive
18 conversations with the operator of the hotel
19 about their restaurant and the signage as well
20 as relating to the signage which appellant 22
21 West, the ANC and WECA understood would be the
22 only sign for the hotel above the entrance on

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1 22nd Street.

2 But getting back to the exhibits in
3 the case, you'll find that the discussion in
4 07-21B refers only to plans A1 and A2 of Exhibit
5 24. Exhibit 36, which the applicant inserted
6 into its proposed findings of fact and
7 conclusions of law and wound up as being
8 referenced in condition 1(a) is a reduced
9 PowerPoint presentation that was submitted
10 after the hearing. It was used by the
11 applicant during the hearing to direct the
12 commission along with the testimony of the
13 architect, the transportation planner and
14 others.

15 And in reviewing the record, which
16 we have in detail, this exhibit was displayed
17 for a whopping 23 seconds.

18 The architect's presentation was
19 over 20 minutes long. There was no further
20 discussion in the record about this exhibit or
21 how it might modify the plans of A1 and A2, which
22 were referenced in the Board's findings and--

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1 CHAIRMAN JORDAN: Doesn't the
2 order say that the plans are approved as amended
3 for Exhibit 36--

4 MS. BRAY: Right. But there's
5 nothing specific about--

6 CHAIRMAN JORDAN: --but then it
7 says about notwithstanding or something
8 Exhibit 24 regarding the signage. Isn't that
9 what it says?

10 MS. BRAY: It says
11 notwithstanding the notations on Exhibit 24.
12 And those notations on Exhibit 24 state that the
13 signage plan on A1 and A2 is for illustrative
14 purposes only.

15 CHAIRMAN JORDAN: You're
16 confusing me because the order does adopt
17 Exhibit 36 though.

18 MS. BRAY: That's right. But
19 Exhibit 36 in its entirety dealt with all kinds
20 of issues.

21 CHAIRMAN JORDAN: I understand.

22 MS. BRAY: It didn't just deal

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1 with the signage.

2 CHAIRMAN JORDAN: But you're
3 saying that's one of the PowerPoints--

4 MS. BRAY: This particular slide
5 which was attached to the zoning determination,
6 page 4 of the applicant's PowerPoint
7 presentation, was displayed for 23 seconds, and
8 includes a signage plan.

9 It's clear from the Commission's
10 findings that they rejected the signage plan
11 and they said the applicant requires, or the
12 Commission finds that certainty is needed and
13 therefore the sign should be located here. It
14 should be of this type and they were speaking
15 in the singular.

16 So with that introduction I'd like
17 to give the floor to Sally Blumenthal, the
18 representative for appellant 22 West who was at
19 that hearing.

20 COMMISSIONER HOOD: Mr. Chairman,
21 can we stop the clock for a minute?

22 CHAIRMAN JORDAN: Yes.

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1 COMMISSIONER HOOD: Can you show
2 me exactly where that language is in the order?

3 MS. BRAY: Absolutely.

4 COMMISSIONER HOOD: I may have
5 missed it. I read something different.

6 MR. MOY: Yes, it's on page--

7 COMMISSIONER HOOD: I saw the one
8 about certainty but not exactly how she just
9 phrased it Mr. Chairman.

10 MR. MOY: It's on page 20 and 21.

11 COMMISSIONER HOOD: I understand
12 that but I want her to show me exactly because
13 I read the same exact thing and--

14 MS. BRAY: It's page 19 of the
15 Board's order. It begins--

16 COMMISSIONER HOOD: Are we
17 talking about B?

18 MS. BRAY: --in paragraph B, right,
19 and specifically I was referring to the last
20 paragraph on page 19 which reads, "The
21 applicant's schematic signage plans
22 demonstrate that the proposed signage for the

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1 hotel will be of a high quality." That language
2 is verbatim of the proposed findings of fact and
3 conclusions of law submitted by the applicant.

4 But the Commission included in its
5 order language that was not proposed by the
6 applicant which actually appeared in the order
7 and reads, "However, the Zoning Commission
8 agrees with ANC-2A that there must be certainty
9 that the actual signage will not differ from
10 that depicted by the applicant.

11 "Therefore, the Commission is
12 adding a condition that the hotel sign must be
13 above the hotel's entrance on 22nd Street as
14 shown page A1 and A2 of the applicant's final
15 set of plans submitted as Exhibit 24, and that
16 the sign cannot be at a different location or
17 be vertically mounted on the facade of the
18 hotel--

19 COMMISSIONER HOOD: Okay. I'll
20 read the rest. For the sake of time I'll read
21 the rest.

22 CHAIRMAN JORDAN: All right. Give

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1 me one second.

2 COMMISSIONER HOOD: But I'm just
3 saying, Ms. Bray, it wasn't exactly in here how
4 you -- what you just read was a little different
5 from what I heard you say. That's my only issue.

6 CHAIRMAN JORDAN: One second.
7 Which paragraph on page 19?

8 MS. BRAY: The last paragraph on
9 page 19.

10 CHAIRMAN JORDAN: Oh yes. Okay.
11 All right. It's right here. Got it. Okay.
12 Clock back on please.

13 MS. BRAY: Ms. Blumenthal.

14 MS. BLUMETHAL: Good morning,
15 Chairman and Members of the Board. For the
16 record I'm Sally Blumenthal, I am the president
17 of the Homeowners Association Board of
18 Directors at 22 West which is located directly
19 across the street from the Hilton Garden Inn.

20 22 West is the only residential
21 property which is in full view of this sign,
22 which we believe was placed there in violation

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1 of the clear language of the zoning order which
2 has been read enough at this point and we'll
3 come back to it.

4 The Board perhaps might wonder why
5 there's so much opposition, both within the ANC
6 and 22 West, about this idea of a sign on the
7 facade during the PUD approval process. And
8 that led to our willingness to file an appeal
9 with the BZA of the Zoning Administrator's
10 erroneous decision that permitted it in the
11 first place.

12 Simply stated, we believe the
13 rooftop signs are detrimental to the character
14 of our neighborhood and that unlike other
15 neighborhoods which have the protection of
16 bodies such as the Historic Preservation Review
17 Board of the Commission of Fine Arts or the
18 Planning Commission or whatever, the only
19 protection that the West End has is through the
20 Zoning Commission, the ANC and the BZA to
21 protect our interest in keeping it from
22 transforming into something like the area

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1 around the Verizon Center with the myriad of
2 lighted signs.

3 I should point out that on the way
4 down here today I happened to drive past City
5 Center as well as the Marriott Marquis hotel at
6 the Convention Center and none of those
7 buildings have lighted signs at the top.

8 If the roof level sign at the Hilton
9 Garden Inn is allowed to remain in place, it
10 will simply become the precedent for the next
11 developer that wants to place a sign on the top
12 of his project.

13 22 West actively participated in
14 the zoning process for this PUD. We reviewed
15 the architectural plans prepared by Shalom
16 Baranes and met with the Office of Planning to
17 discuss the project.

18 While we were satisfied that the
19 Baranes drawings on page A1 and A2 only showed
20 a sign above the door on 22nd Street, we
21 proactively included in our comments to the
22 Zoning Commission that that should be the only

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1 sign. There should be no rooftop sign as that
2 requirement should be a condition of the zoning
3 order if it approved the PUD.

4 At the Zoning Commission the
5 developer did talk about the need for
6 flexibility because Hilton is a big
7 organization and they were working through all
8 of this and that whatever came out of that, the
9 proposed signage would meet the D.C. Building
10 Code.

11 The ANC, on the other hand during
12 the zoning process, supported the opposition
13 of 22 West to a lighted sign on the top of the
14 hotel and requested that the zoning order be
15 conditioned on the sign being above the hotel's
16 entrance on 22nd Street as depicted on page A1
17 and A2 of Shalom Baranes' drawing which we've
18 now already gone into the zoning order and read
19 that the Zoning Commission agreed with the ANC
20 that there should be certainty that this is
21 where the sign would be placed.

22 We believe that the Zoning

1 Commission conditioned the zoning order in this
2 matter in direct response to the position of the
3 ANC and 22 West.

4 So in conclusion let me just make a
5 comment. When we read the zoning order and the
6 ANC read the zoning order, we were confident
7 that our voice had been heard. So you can
8 imagine our consternation in late 2013 when the
9 brackets for supporting the signs suddenly
10 became obvious what they were for on the top of
11 the building with the electrical wire hanging
12 from it.

13 Relying on the explicit language of
14 the zoning order there would have been no reason
15 for the ANC or 22 West to have gone rummaging
16 in the files of DCRA looking for a building
17 permit allowing a sign.

18 We believe the case was settled,
19 therefore we respectfully ask the Board to
20 revoke the sign permit and order the sign to be
21 removed from the hotel because it violates,
22 specifically violates condition 1(a) of the

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1 zoning order. Thank you for your
2 consideration and I'll be happy to answer any
3 questions.

4 CHAIRMAN JORDAN: Thank you.
5 Appreciate it.

6 MS. BRAY: I have one question of
7 Ms. Blumenthal. Ms. Blumenthal, throughout
8 the testimony at the Zoning Commission hearing
9 there was a reference to the Marriott sign and
10 specifically counsel for the applicant said the
11 ANC has asked that the sign not be like the
12 Marriott, it will not be like the Marriott.

13 Can you elaborate on what that meant
14 or describe the Marriott sign so that you might
15 shed some light on that issue?

16 MS. BLUMENTHAL: Yes, certainly.
17 The Marriott sign also shines into our
18 building. The ANC and the neighborhood uses
19 the Marriott sign as a sort of a shorthand for
20 visual intrusion. The Marriott, I don't know
21 how long ago that was developed but it was early
22 on in the CR zone, and has a sign with the

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1 letters mounted M-a-r-r-i-o-t-t this way. It
2 is bright red and very intrusive.

3 MS. BRAY: So the language that 22
4 West supplied and the ANC agreed to in 07-21B,
5 that the sign not be vertically mounted to the
6 facade of the building. Is it your
7 understanding that you were seeking a
8 limitation on the orientation of the sign on the
9 building, either horizontal or vertical, or the
10 method of attaching the sign?

11 MS. BLUMENTHAL: We were
12 definitely seeking the method of attachment. It
13 didn't really matter -- it did not refer to
14 whether the sign was oriented horizontally or
15 vertically, it started as mounted parallel to
16 the facade vertically against the facade at the
17 roof level.

18 MS. BRAY: Thank you.

19 CHAIRMAN JORDAN: Okay. Board,
20 any other questions or anything else Ms. Bray?

21 MS. BRAY: No, I have nothing
22 further for Ms. Blumenthal and I'd like to turn

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1 the floor over to Florence Harmon of ANC-2A.

2 CHAIRMAN JORDAN: Sure. Thank
3 you.

4 MS. HARMON: Chairman Jordan and
5 Members of the Board of Zoning Adjustment, for
6 the record I am Florence Harmon, vice chair of
7 the Advisory Neighborhood Commission 2A.

8 ANC-2A includes both Foggy Bottom
9 and the West End neighborhoods.

10 We have filed a written objection to
11 the February 10, 2014 determination letter of
12 Matt LeGrant which modified the explicit
13 condition of the Zoning Commission's order in
14 this case. And we were definitely under the
15 impression that the Zoning Commission order
16 expressly prohibited the sign at issue today.

17 At the onset I want to describe our
18 neighborhood and the character of ANC-2A which
19 has really changed in the last 10 years.

20 The city's encouraged numerous
21 residential developments in our area and the
22 residential population has grown and just this

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1 past year my single member district was
2 redistricted due to this population growth.

3 My district now goes up into West
4 End whereas previously it went down into Foggy
5 Bottom.

6 And the ANC feels like if the city
7 encourages this influx of new residents, their
8 livability has to be also supported. And as
9 the ANC commissioner it's not just the
10 residents of 22 West who are concerned about it,
11 it's every single ANC commissioner who is
12 concerned about the tactics that were used in
13 this case. Every single ANC commissioner
14 unanimously supported 22 West but I have a lot
15 of constituents who live in the Ritz Carlton who
16 are also very concerned about this particular
17 signage.

18 The ANC used to be perceived as the
19 organization that would just simply take a
20 knee-jerk opposition to positions raised by
21 developers, particularly George Washington
22 University. But in the past years we've

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1 really worked hard to be judicious and
2 thoughtful and not just have a knee-jerk
3 reaction.

4 We've actually supported
5 commercial development in our ANC and notably
6 we've supported the East Bank developers
7 against numerous legal challenges by the
8 library renaissance group. And notably we've
9 also supported George Washington University on
10 a number of occasions and very other
11 developers.

12 So we've really tried to
13 thoughtfully weigh the interest of residents
14 and commercial developers in pragmatic terms so
15 they can peacefully co-exist so you don't have
16 this type of situation come up. And we really
17 rely on the candor of the residents, the
18 developers and their legal counsel.

19 So we weighed those concerns and we
20 came to the conclusion, after examining all
21 these equities and the legal precedents, that
22 the best thing for the residents of 22 West and

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1 the Ritz Carlton and the developer of the Hilton
2 Garden Inn would be not served by having a sign
3 at the top of the roof that projected light into
4 neighboring residences.

5 And when we read the Zoning
6 Commission's orders, as has been previously
7 read on page 19, we had no doubts that the Zoning
8 Commission had put in a condition that the only
9 sign for the hotel must be on the hotel's
10 entrance on 22nd Street.

11 And also the bottom of page 19 going
12 up to page 20, also that language is repeated
13 on page 22 and 23 of the Zoning Commission's
14 order.

15 Now, I've given, actually I think
16 Kinley gave Cliff Moy a copy of what the ANC is
17 hearing. As was mentioned, that PowerPoint
18 was up for 23 seconds. Then if you look at what
19 we've just handed you, the exhibit, there is no
20 way you can see this sign. And the ANC did not
21 get any notice before the hearing. The
22 applicant did not come to an ANC meeting and

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1 point out this or point it out to us during the
2 hearing that this is the position they were
3 going to take.

4 Nor did after the Zoning Commission
5 hearing did the applicant says well gee I filed
6 this other exhibit and there is a sign on there,
7 it's very hard to discern red smudge but that
8 modifies the Zoning Commission's language.

9 We never heard that from the
10 applicant in this case.

11 So we do oppose and support the
12 residents of 22 West in this matter. We
13 thought the issue was settled, we thought the
14 language of the Zoning Commission's order had
15 been carefully written and that the applicant
16 would comply with this language. We didn't get
17 any further communication after the November
18 2011 order was issued to the contrary from the
19 applicant. So we were really surprised when Mr.
20 Collins advanced this argument.

21 The applicant knew this sign was of
22 great concern. And the ANC also has concerns

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1 that this exhibit that we can't see a sign on,
2 is being argued to modify the conditions of a
3 PUD, which we feel certainly doesn't seem to be
4 supported by legal authority as the grounds for
5 modification of a PUD are very narrow.

6 We are concerned that the denial of
7 our appeal will set a precedent encouraging
8 parties in a Zoning Commission proceeding or a
9 BZA proceeding to seek interpretations of
10 orders that contradict the language mandated in
11 the actual order and through the filing of
12 exhibits that are illegible or difficult to
13 read, that are flashed on the screen for 23
14 seconds and given to the parties in a hearing
15 after where you can't really see it, we don't
16 think this is a method that is going to promote
17 final determinations of the Zoning Commission
18 or the Board of Zoning Adjustment.

19 So we would respectfully urge the
20 Board to give careful attention to the concerns
21 articulated by the ANC and we would request the
22 Board give great weight to ANC-2A's position to

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1 approve the appeal, revoke the sign permit, and
2 order that the lighted sign at the roof of the
3 Hilton Garden Inn be removed as it is in
4 violation of the specific language of the
5 Zoning Commission's order.

6 Thank you for your consideration
7 and I'll be happy to take questions.

8 CHAIRMAN JORDAN: Board, any
9 questions?

10 COMMISSIONER HEATH: I have one
11 question for Ms. Harmon before we get to the
12 Board if I may. Ms. Harmon, you sat on the ANC
13 in April of 2014. Is that right?

14 MS. HARMON: Yes, I did.

15 COMMISSIONER HEATH: And in April
16 of 2014 did George Washington University seek
17 a minor modification to alter their signage for
18 the School of Public Health?

19 MS. HARMON: I believe so.

20 COMMISSIONER HEATH: And is it
21 your understanding that they went to the Zoning
22 Commission for that modification?

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1 MS. HARMON: Yes, it is.

2 COMMISSIONER HEATH: Did the ANC
3 support it?

4 COMMISSIONER HEATH: I believe
5 so, yes.

6 COMMISSIONER HEATH: Okay.
7 Thank you.

8 COMMISSIONER HOOD: Ms. Bray,
9 going down those lines I'm just curious and I
10 understand all the facts, why was this not
11 brought back to the Commission for
12 clarification even on a consent calender or
13 correspondence? And I know what the rules say
14 I guess the BZA for appeals, but why was this
15 not brought simply for a correspondence item
16 back to the Zoning Commission?

17 MS. BRAY: Well, I think that's
18 probably a good question for Ms. Blumenthal.
19 I mean she can describe how she initiated
20 contact with the Zoning Commission staff.

21 COMMISSIONER HOOD: Okay.

22 MS. BLUMENTHAL: Chairman Hood,

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1 I'd be happy to answer that question. I'm an
2 amateur in this process although I have--

3 COMMISSIONER HOOD: You are? Do
4 you a guy named John Parsons?

5 MS. BLUMENTHAL: Who?

6 COMMISSIONER HOOD: Oh okay.

7 MS. BLUMENTHAL: Once I received
8 the vague email from Chris Collins that zoning
9 authorities had approved it and the zoning
10 order permitted the sign, I contacted Sharon
11 Schellin, Secretary of the Commission, and
12 asked her advice and how to go about what to do
13 next.

14 And she advised me that it was the
15 BZA that was the forum for appealing this
16 decision, not that I could go back to the Zoning
17 Commission. Had she said that going back to
18 the Zoning Commission was the appropriate
19 vehicle I would have done that.

20 COMMISSIONER HOOD: Okay. Well,
21 anyway we have had clarifications
22 correspondence we've done that.

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1 MS. BLUMENTHAL: From somebody
2 other than an applicant?

3 COMMISSIONER HOOD: Yes. We've
4 done that for clarification. We've had to
5 clarify our orders. I know specifically we've
6 done that in the past but I'm not sure what all
7 the other issues were.

8 MS. BLUMENTHAL: Okay. Thank you.

9 MS. BRAY: If I could just respond
10 to that. I think you mentioned when you asked
11 the question, Chairman Hood, there is no
12 provision in the Zoning Commission's Rules of
13 Procedure that allow for enforcement.

14 COMMISSIONER HOOD: I realize
15 that.

16 MS. BRAY: And so when Ms.
17 Blumenthal inquired of Ms. Schellin and I think
18 the question was asked what do you do to enforce
19 a Zoning Commission order? And the response
20 was well that's the purview of the Zoning
21 Administrator or the BZA.

22 COMMISSIONER HOOD: Okay. And

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1 I'm looking at what was provided was the
2 comments of at that time Vice Chair Schlater.
3 He did talk about the sign but my interpretation
4 of what he meant, and I kind of recall some of
5 that, was a little different from what I'm
6 hearing.

7 But I don't know if I'm getting too
8 far into what's in front of us. We still have
9 a time issue to rule on. He was talking about
10 the neon, and it wasn't necessarily the mounted
11 sign I thought and it goes back a while so I may
12 be off line on it. But I just thought it was
13 about the brightness, the neon, and how it's set
14 up there. So I may be incorrect but I thought
15 that was more germane to his comments. I
16 actually remember some of that conversation.

17 MS. BRAY: I can direct you to the
18 transcript on that question.

19 COMMISSIONER HOOD: That's
20 exactly what I looked at.

21 MS. BRAY: There was a discussion
22 with Mr. Meservey who testified on behalf of the

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1 applicant at that time about what had been
2 presented as part of the architect's submission
3 represented a signage plan. I believe that was
4 the question of Mr. Schlater, and the applicant
5 responded, yes this is a signage plan.

6 Okay. Accepting that for what it's
7 worth, our argument as contained in our
8 pre-hearing statement and in the statement of
9 appeal, is that the Zoning Commission declined
10 to accept that.

11 The Zoning Commission in its
12 discussion adopted the signs as they were
13 depicted, the restaurant sign and the hotel
14 sign, as they were depicted on A1 and A2 of
15 Exhibit 24 and concluded that the ANC's concern
16 was valid enough to require certainty of the
17 applicant.

18 The applicant didn't ask for
19 flexibility in anything other than the
20 restaurant signage. The Board's order is
21 devoid of any discussion of flexibility to the
22 applicant on the question of signage, with the

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1 exception of the restaurateur and the ability
2 to modify to address code requirements.

3 COMMISSIONER HOOD: What did the
4 final drawing show? Not the PowerPoint
5 presentation, what did the final drawing show?

6 MS. BRAY: The final drawings show
7 a single hotel sign above the entrance on 22nd
8 Street that extends from the awning above that
9 entrance--

10 COMMISSIONER HOOD: So it didn't
11 show the other sign -- it didn't show the other
12 sign up at the top?

13 MS. BRAY: It did not show that.

14 COMMISSIONER HOOD: Okay. All
15 right. Thank you. Thank you, Mr. Chairman.

16 CHAIRMAN JORDAN: Board, any
17 other questions? Then let's turn to -- well I
18 guess let's turn to the owner's side of the case
19 please.

20 MR. POSTULKA: Will there be time
21 for a cross?

22 CHAIRMAN JORDAN: Since we have

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1 witnesses, yes you can cross.

2 MR. POSTULKA: Okay. I just have a
3 few questions.

4 CHAIRMAN JORDAN: Please, go
5 ahead.

6 MR. POSTULKA: Is it your position
7 that the hotel can have one sign above the main
8 door or also a sign for the restaurant so two
9 total signs?

10 MS. BLUMENTHAL: There was never
11 any question, there's no discussion in the
12 zoning order about a restaurant sign.
13 Obviously, the restaurant is going to have a
14 sign.

15 At the time of the zoning hearing
16 the owner had no idea who the restaurant
17 operator was going to be. There was some
18 comedic reference during the Commission's
19 discussions that it not be big shiny golden
20 arches, but other than that it was not explicit.

21 Obviously, both the neighborhood
22 and the ANC would acknowledge that a pedestrian

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1 level sign for a restaurant is appropriate.
2 We've actually been working jointly with the
3 hotel on the Café DeLuxe sign as well as the size
4 of the sign that will be above the door. I
5 believe they are currently going through public
6 space to get those two signs approved.

7 MR. POSTULKA: Just so I'm clear.
8 You concede that the restaurant can have a sign
9 but you're claiming that the ZC order doesn't
10 allow that?

11 MS. BLUMENTHAL: No. We are
12 claiming that the zoning order says that the
13 hotel will have one sign -- singular -- above
14 its hotel's entrance on 22nd Street. The
15 entrance to Café deLuxe is around the corner on
16 M Street and that is the approximate location
17 where that sign will be installed.

18 MR. POSTULKA: And is there
19 language in the ZC order saying the restaurant
20 can have a sign?

21 MS. BLUMENTHAL: I don't know that
22 there's language in the order saying the

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1 restaurant can have a sign or not.

2 MR. POSTULKA: So it would be by
3 reference to plans that the restaurant would be
4 allowed to have a sign, not by specific language
5 in the ZC order?

6 MS. BLUMENTHAL: No, I think the
7 issue is that what the Zoning Commission was
8 responding to was the community and the ANC's
9 opposition to a rooftop sign like the Marriott,
10 so the only explicit language in the zoning
11 order relative to it are that it shall not be
12 mounted on the roof or illuminated from within
13 and that the hotel sign, hotel sign, shall be
14 located above its entrance on 22nd Street.

15 MR. POSTULKA: But I'm just
16 wondering then, there's no language saying the
17 restaurant sign--

18 CHAIRMAN JORDAN: I think we've
19 kind of beaten this horse. You cannot make her
20 say what you want her to say and we're not having
21 cross argument here. Next question.

22 MR. POSTULKA: Okay.

1 CHAIRMAN JORDAN: Any other
2 questions?

3 MR. POSTULKA: No.

4 CHAIRMAN JORDAN: Okay. Mr.
5 Collins, any cross?

6 MR. COLLINS: No.

7 CHAIRMAN JORDAN: All right.
8 Your 10 minutes is starting. All right. I
9 always contend again that the DCRA-- go ahead.

10 MR. POSTULKA: Well, I will call
11 the Zoning Administrator to offer his position.

12 CHAIRMAN JORDAN: Would you state
13 your name and job duties?

14 MR. LEGRANT: Matthew LeGrant,
15 I'm the Zoning Administration DCRA.

16 MR. POSTULKA: And as the Board
17 has done on numerous occasions I move to have
18 Mr. LeGrant recognized as an expert in zoning
19 matters.

20 CHAIRMAN JORDAN: Certainly.

21 MR. POSTULKA: Okay. You've
22 heard the allegations that the Hilton Garden

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1 Inn can only have one sign above the main
2 entrance, correct?

3 MR. LEGRANT: That's correct.

4 MR. POSTULKA: And have you
5 reviewed these allegations to determine
6 whether they have merit?

7 MR. LEGRANT: I have.

8 MR. POSTULKA: And what did you
9 review in reviewing the allegations?

10 MR. LEGRANT: Okay. I looked at
11 the PUD order and the exhibits attached as well
12 as the building permit submitted by the
13 developer in response to that order to see what
14 the signage program was, what the Zoning
15 Commission approved as well as what was
16 submitted.

17 The language of 1(a) on first
18 reading does suggest one singular sign--

19 MR. POSTULKA: Because it uses the
20 word singular.

21 MR. LEGRANT: However, my review
22 of the order I found that there was focus and

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1 a concern on the part of the West 22 as well as
2 the ANC about that particular location near the
3 street as to the impacts of that particular
4 sign. So I believe that the Commission was
5 focused on that concern and wrote a specific
6 condition dealing with that particular sign.

7 In addition, when you look at the
8 entirety of the record, the exhibit which we've
9 all noted here, Exhibit 36, does show the east
10 elevation along 22nd Street of the entire
11 facade of that hotel.

12 That, although it's been noted by
13 the appellant and again my first look at that
14 as well, was boy, it's a difficult graphic to
15 read. However, if you look, and we had to I
16 think actually get a real clean copy of that to
17 see exactly what was entailed, that exhibit
18 clearly showed a sign at the top of the hotel
19 and there's a notation in the key, there's a key
20 box at the bottom of that graphic that notes
21 that sign.

22 So when my staff reviewed the

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1 application in the summer of 2012, my charge is
2 that they are to review the entirety of the
3 order before any building permit could be
4 approved.

5 My staff did find compliance with
6 the order at that point in time, signed off on
7 the building permit application and the permit
8 was ultimately issued.

9 So that was my approach of how the
10 signage program of the Hilton Garden Inn was
11 presented to the Commission, my interpretation
12 of the Commission's approval and what the
13 record showed for that case.

14 MR. POSTULKA: Just so it's clear,
15 your position is that the sign at issue is
16 allowed by the Zoning Commission's PUD order?

17 MR. LEGRANT: Yes, it is.

18 MR. POSTULKA: I don't have any
19 further questions.

20 CHAIRMAN JORDAN: Any cross?

21 MS. BRAY: One moment, please. Mr.
22 LeGrant, you mention in your testimony that it

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1 was your understanding that 22 West or the ANC
2 was concerned about the impact of a street level
3 sign.

4 MR. LEGRANT: Yes.

5 MS. BRAY: Can you point me to
6 testimony in the record of 07-21B that
7 indicates that there was any concern about
8 street level signage?

9 MR. LEGRANT: My review of the
10 entire record was that there was a focus on that
11 particular sign. There was a discussion about
12 a sign above the hotel's entrance. And so that
13 I concluded is that particular concern was
14 focused on that particular sign.

15 MS. BRAY: But it was the
16 testimony of the ANC and 22 West was it not that
17 they were concerned about roof level signage?

18 MR. LEGRANT: Well, I understand
19 that there was concern about roof level signage
20 expressed in the record.

21 MS. BRAY: Were you aware that
22 prior to your meeting with the applicant for the

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1 building permit in February of 2014 that there
2 was pending an application for a sign permit?

3 MR. LEGRANT: I did not.

4 MS. BRAY: When the applicant
5 approached you to make your determination you
6 issued that letter directly to the applicant's
7 counsel. Is that right?

8 MR. LEGRANT: That's correct.

9 MS. BRAY: And was that published
10 anywhere?

11 MR. LEGRANT: The policy of my
12 office is that the determination letters are
13 posted on DCRA's website to be accessible to the
14 greater community.

15 MS. BRAY: And your determination
16 was issued on February 10, 2014, was it not?

17 MR. LEGRANT: Yes.

18 MS. BRAY: I have here a printout of
19 the Department of Consumer and Regulatory
20 Affairs website listing all determination
21 letters from 2014 through June 27th of 2014 and
22 I'd like to enter this into the record but I

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1 direct your attention specifically -- and I'll
2 give you a copy of this -- to page 3 which begins
3 listing the orders dated in February 2014.
4 Looking at that page 3 do you see--

5 CHAIRMAN JORDAN: Do you have a
6 copy for us?

7 MS. BRAY: I do. It actually is
8 attached to the response to the motion to
9 dismiss in this case. It is Exhibit A of the
10 response to the motion to dismiss.

11 Mr. LeGrant, beginning with the
12 list that starts on page 3, are there any
13 letters that were issued on February 10, 2014
14 listed?

15 MR. LEGRANT: Okay. Well, two
16 things. You've handed me four pages here and
17 they're all listed at the top of page 1 of 1,
18 so I'm not sure which one is page 3.

19 MS. BRAY: The third--

20 MR. LEGRANT: With the highlight,
21 the little boldface? Is that what you're
22 speaking of?

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1 MS. BRAY: The third page in the
2 order in which I handed them to you. There's
3 a list of dates--

4 MR. LEGRANT: Okay. Thank you.
5 No, I do not see that. But let me make a second
6 point. It's the policy of my office to put
7 these determination letters on our website.
8 Working with my other staff including my Office
9 of Information Systems, I'll concede on
10 occasion that does not occur.

11 As you know, and I think as the Board
12 knows, in my email to Ms. Blumenthal on February
13 28th, I attached the letter to ensure that she
14 was aware and saw that determination.

15 So not a perfect system to post
16 these. There's improvements that I
17 continually work on but because I know in this
18 particular case the interest that this was
19 germane to the concern.

20 MS. BRAY: And I appreciate--

21 CHAIRMAN JORDAN: Are these
22 questions going to the issue of what was

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1 required or allowed? It sounds like a question
2 going back to--

3 MS. BRAY: What was issued when.

4 CHAIRMAN JORDAN: Let me finish.
5 The door being closed on the motion to dismiss
6 that we've already had argument on.

7 MS. BRAY: The issue that I'm
8 trying to ferret out here at this point is when
9 this was communicated to Ms. Blumenthal and in
10 what form. And Mr. LeGrant just answered that
11 question.

12 CHAIRMAN JORDAN: And I'm saying
13 let's move on and deal with the issue that's
14 before us. We've had argument regarding the
15 motion to dismiss and that was my initial
16 question to you. That seems to me to go to the
17 substance of knew or should have known or etc.,
18 in regard to her ability of finding the letter.

19 MS. BRAY: I don't have anything
20 for Mr. LeGrant. He answered my question.

21 MR. POSTULKA: No redirect and
22 DCRA's case is complete.

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1 CHAIRMAN JORDAN: All right.
2 Well, Mr. Collins, is there a question you
3 wanted to ask?

4 MR. COLLINS: I have no questions for
5 Mr. LeGrant.

6 CHAIRMAN JORDAN: Then we're on
7 your ten minutes.

8 MR. COLLINS: Thank you. ANC-2B
9 and 22 West, the appellants in this case, were
10 both--

11 CHAIRMAN JORDAN: Excuse me one
12 second please. Mr. Moy, do you want to--

13 MR. MOY: I think it's 20, right?

14 MS. BRAY: We said 20 for each
15 party.

16 CHAIRMAN JORDAN: All right.
17 Okay.

18 MR. COLLINS: Okay. Thank you, Mr.
19 Chairman. ANC-2A and 22 West were both
20 participants in the PUD process for this case,
21 including the public hearing. In the order
22 that was issued by the Zoning Commission in

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1 07-21B, pages 19 and 20 which has already kind
2 of been discussed here a little bit, that the
3 bottom of page 19 and carrying over to page 20
4 the Zoning Commission stated that the
5 Commission agrees that there must be certainty
6 that the actual signage will not differ from
7 that depicted by the applicant.

8 And they referred to a condition to
9 be added to the decision referencing Exhibit
10 24.

11 That's the only sign that was
12 discussed by the ANC. They did not discuss the
13 sign shown on Exhibit 36. The sign on Exhibit
14 36 was shown at the public hearing. We've heard
15 a discussion about it's a very small copy, it's
16 legible. I'm gesturing to the screen on my right
17 -- your left -- which measures about 6 feet x
18 8 feet. That slide was shown on that drawing.
19 It was enough for the Commission to understand
20 it and have a discussion about it with the
21 applicant.

22 The decision at A1 on pages 22 and

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1 23, the Commission order talks about the plans
2 in Exhibit 4 as supplemented by the Exhibit 36
3 plans and the Exhibit 24 plans show only the one
4 hotel sign over the canopy entrance.

5 And then what the Zoning Commission
6 says in that is that the hotel sign in Exhibit
7 24 must be at that location, can't be mounted
8 elsewhere, can't be vertical or can't be
9 internally illuminated.

10 The PUD record for the public
11 hearing is very clear, and I've attached
12 segments of the transcript to our document
13 where the architect testified to the four signs
14 shown on Exhibits 24 and 36. The PowerPoint,
15 as I said, was shown on a screen, he had that
16 up as he was talking about it.

17 Mr. Baranes discussed it in this
18 way. He's referring to the drawings, he points
19 out on his transcript at page 55 and 56 that
20 these two spots at the very top of the vertical
21 bay on the corner, these signs would be
22 approximately 3 to 3.5 feet tall.

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1 And Commissioner Schlater then
2 subsequent to the applicant's presentation was
3 making questions to the applicant's witnesses
4 and he raised two issues that the ANC had
5 concerns about.

6 One was about the restaurant, would
7 it continue to be a restaurant, would it be
8 changed at any point in the future? And Mr.
9 Meservey on behalf of the applicant testified
10 that it would not.

11 And then Commissioner Schlater said
12 on page 119 of the transcript, can we talk for
13 a second about the signage? Both the retail
14 signage and then the hotel signage. First,
15 let's talk about the hotel signage. And Mr.
16 Meservey responded that the scale of the
17 signage would in fact be as shown there on the
18 plan, on Exhibit 36 and 24, and the architects
19 walked through that in terms of dimensions of
20 the sign.

21 And Mr. Meservey also explained
22 that the approximate sign dimensions on the

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1 sign location is represented on the plans that
2 were shown. And then Mr. Schlater asked
3 whether there's going to be some large banner
4 neon sign and Commissioner Schlater, after the
5 applicant said no there would not be,
6 Commissioner Schlater said, okay I'm satisfied
7 you've addressed both of those concerns --
8 meaning both of those ANC concerns.

9 The ANC was there. They saw the
10 presentation; 22 West was there, they saw the
11 presentation. The fact that they didn't bring
12 up any discussion about the signs on the top of
13 the building, that explains if nothing else,
14 that explains why the focus of the Commission
15 and their order saying in response to the fact
16 that agreeing with the ANC that the sign shall
17 be as shown by the applicant and the only
18 concern the ANC had was about the sign on
19 Exhibit 24, that's the one that the Commission
20 made reference to about it couldn't be
21 vertically mounted, but only horizontally
22 mounted. It couldn't be internally

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1 illuminated, and it is neither one.

2 Nor is the sign at the top that's the
3 subject of this hearing, it is not vertically
4 mounted. It is horizontally mounted. It is not
5 internally illuminated, it is backlit.

6 CHAIRMAN JORDAN: Where does the
7 Zoning Commission refer to that top signage?

8 MR. COLLINS: When they reference
9 Exhibit 36.

10 CHAIRMAN JORDAN: But what does it
11 mean in the order -- I mean this thing is, and
12 at page 22, the PUD shall be developed in
13 accordance with the architectural plans and
14 elevations prepared by Shalom Baranes
15 Associates dated October 7, 2011, Exhibit 24 as
16 supplemented by plans presented by the public
17 hearing Exhibit 36. The plans as modified by
18 guidelines and conditions and standards herein
19 notwithstanding the notes on page A1 and A2
20 Exhibit 242 I think, the hotel signage shall be
21 above the hotel entrance on 22nd Street as shown
22 in these pages.

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1 And that the sign cannot be at a
2 different location or be vertically mounted on
3 the facade of the hotel illuminated from
4 within.

5 They say on page 20 the applicant's
6 schematic signage plan demonstrates that the
7 proposed signage for the hotel will be of high
8 quality. However, the Zoning Commission
9 agrees with ANC-2A that there must be certainty
10 that the actual signage will not differ from
11 that depicted by the applicant. Therefore,
12 the commission is adding the condition that the
13 hotel sign must be above the hotel's entrance
14 on 22nd Street as shown in A1, A2 of the
15 applicant's final set of plans submitted in
16 Exhibit 24.

17 MR. COLLINS: Yes.

18 CHAIRMAN JORDAN: Does that seem
19 like it's very specific in regards to where the
20 hotel sign was supposed to be?

21 MR. COLLINS: The hotel sign show
22 on Exhibit 24 yes.

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1 CHAIRMAN JORDAN: It doesn't say
2 in addition to the signage at the top? It
3 doesn't say but for something else. It makes
4 specific references and general reference to
5 Exhibit 36. Exhibit 36 is a general reference
6 to the overall plan of the hotel, correct?

7 MR. COLLINS: It shows a number of
8 things including the hotel signage.

9 CHAIRMAN JORDAN: It's a general
10 reference to everything--

11 MR. COLLINS: As do the plans for
12 the--

13 CHAIRMAN JORDAN: But does not the
14 Zoning Commission's language specifically
15 reference hotel sign and Exhibit 24 when it
16 talks about the sign?

17 MR. COLLINS: Yes.

18 CHAIRMAN JORDAN: It doesn't
19 specifically reference the sign and says and
20 the sign Exhibit 36 does it?

21 MR. COLLINS: What is read here is
22 talking about the ANC's concerns--

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1 CHAIRMAN JORDAN: I'm talking
2 about the order.

3 MR. COLLINS: I'm talking about
4 the order as well.

5 CHAIRMAN JORDAN: Okay. Go ahead.

6 MR. COLLINS: I'm talking about
7 the bottom of page 19 of the order. The third
8 paragraph under subparagraph (b). The Zoning
9 Commission agrees with ANC-2A. The ANC-2A's
10 concerns expressed about signage in the hearing
11 was with regard to the sign shown on Exhibit 24.
12 They wanted that sign on Exhibit 24 over the
13 hotel's entrance to be there and not vertically
14 mounted like the signs across the street at the
15 Marriott.

16 And that's the only concerns that
17 they had expressed. Exhibits 24 and Exhibit 36
18 including the signed plan on Exhibit 36 were
19 shown during the public hearing where the ANC
20 was present, where 22 West was present. They
21 did not raise any concerns about either of those
22 signs. Mr. Baranes testified to them, there was

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1 a colloquy between Commissioner Schlater and
2 Mr. Meservey about those signs, there was no
3 discussion by the ANC and 22 West.

4 CHAIRMAN JORDAN: Well, on
5 Exhibit 36, the sign above the door, where is
6 it located in Exhibit 36?

7 MR. COLLINS: Same place, above
8 the door.

9 CHAIRMAN JORDAN: Why was there a
10 reference then to Exhibit 24? The sign above
11 the door is the same in 24, right, and the same
12 in 36, the one above the door?

13 MR. COLLINS: Yes.

14 CHAIRMAN JORDAN: Same location?

15 MR. COLLINS: Correct.

16 CHAIRMAN JORDAN: Okay. So if the
17 Zoning Commission was approving everything
18 that was in 36, why would they need to reference
19 24 if what was in 24 is contained in 36?

20 MR. COLLINS: Well, let me turn it
21 around the other way--

22 CHAIRMAN JORDAN: No, no, you

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1 answer my question. I don't need you to turn
2 anything for me, I want you to answer the
3 question if you please, Mr. Collins.

4 MR. COLLINS: I don't know why
5 they -- because I can't put myself in their
6 shoes. I don't know why it was written that way.
7 But if you think about it, had they done that,
8 then that would have been a clear signal that
9 the sign at the top was not allowed.

10 CHAIRMAN JORDAN: Was the sign on
11 the top at 36?

12 MR. COLLINS: Yes.

13 CHAIRMAN JORDAN: Okay. Oh
14 that's not the same. If the sign that's
15 contained in 24 is on Exhibit 36 in the same spot
16 and place and 36 had the sign at the top, okay,
17 then why would they need to reference
18 specifically and directly Exhibit 24?

19 MR. COLLINS: Because that was the
20 only sign that the ANC and 22 West expressed
21 concern about.

22 CHAIRMAN JORDAN: But it's also

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1 contained in 36.

2 MR. COLLINS: Correct. And what
3 we're talking about, you and I are talking about
4 a finding of fact. In the decision, the
5 decision references both Exhibits 24 and 36.

6 CHAIRMAN JORDAN: But you're
7 taking 36 as being all encompassing that gave
8 the permission for signage in the building?
9 Correct?

10 MR. COLLINS: Correct.

11 CHAIRMAN JORDAN: And other
12 things. The basic design, the going forward
13 was contained in Exhibit 36. Is that correct?

14 MR. COLLINS: That's the signed plan
15 that was testified to by Mr. Baranes and was
16 the subject of the colloquy between
17 Commissioner Schlater and Mr. Meservey, yes.

18 CHAIRMAN JORDAN: So if what's in
19 24, the sign in 24, is on 36 why would you need
20 to reference 24 in the order, unless you just
21 think that the Zoning Commission just wanted to
22 say something about 24?

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1 MR. COLLINS: They would say in
2 response to the ANC's expressed concern that
3 only was expressed with Exhibit 24.

4 CHAIRMAN JORDAN: Okay. I'm
5 clear. Go ahead. Do continue.

6 MR. COLLINS: Give me a second
7 please. The Zoning Commission adopted the
8 applicant's plans for signage, Exhibits 24 and
9 36. The sign that is the subject of this is
10 not like the Marriott sign which is a concern
11 that the ANC had. The sign is not vertically
12 mounted, it is horizontally mounted. It's not
13 internally illuminated, it is backlit.

14 The PUD applicant relied upon the
15 PUD approval for the signage. The applicant
16 relied upon the building permit issuance for
17 the signage. The applicant's representative
18 did due diligence when the appellants raised
19 this issue to make sure that there was no second
20 guessing or that other issues regarding this
21 signage, to make sure that it was properly
22 approved and received confirmation that it was

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1 approved.

2 For all the reasons stated in our
3 pre-hearing statement and opposition to appeal
4 and as I've just explained just now, we
5 respectfully request that the appeal be denied.
6 Thank you.

7 CHAIRMAN JORDAN: Thank you. Any
8 other testimony or nothing, just summary
9 argument?

10 MR. COLLINS: Unless there's any
11 questions.

12 CHAIRMAN JORDAN: Come forward
13 with questions. Then we will conclude this
14 hearing.

15 MS. BRAY: Mr. Chairman, if I may
16 I'd like to request--

17 CHAIRMAN JORDAN: You want your
18 rebuttal? You get a rebuttal.

19 MS. BRAY: Yes. One moment of
20 rebuttal. I have a question of Ms. Harmon on
21 rebuttal with respect to the ANC's testimony
22 which you heard Mr. Collins say addressed the

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1 pedestrian level signage and did not respond to
2 Exhibit 36 at all.

3 Ms. Harmon, let me give you a copy
4 of this.

5 CHAIRMAN JORDAN: Do you want to
6 reference it for us please.

7 MS. BRAY: Yes. It's Exhibit 49
8 in Case No. 07-21B is what we're looking at Ms.
9 Harmon. What is Exhibit 49?

10 MS. HARMON: It's a letter from
11 the Chair of the ANC at the time dated November
12 15, 2011, Rebecca Kota, responding to D-DOT's
13 report in the Zoning Commission case.

14 MS. BRAY: And is it your
15 understanding that this was after the hearing
16 on the merits in this case?

17 MS. HARMON: Yes, it was.

18 MS. BRAY: And does this ANC
19 response address signage?

20 MS. HARMON: Yes, it does.

21 MS. BRAY: Can you read for me that
22 portion.

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1 MS. HARMON: Yes. The ANC, and I
2 remember discussing this with Rebecca, was
3 specifically concerned about this particular
4 sign and we did not want to limit our concern
5 to say we just don't want a sign like the
6 Marriott.

7 The concern of the ANC was greater
8 than that and the letter reads, which was
9 accepted and tabbed by the Zoning Commission
10 that the ANC appreciates the applicant and its
11 response to the ANC has generally stated that
12 the sign quote "will not be like the Marriott"
13 close quote but would like to see specific
14 language included -- and she meant in the order
15 -- regarding that the Hilton Garden Inn sign
16 should be made a condition of the zoning order.

17 It should be above the hotel's
18 entrance on 22nd Street, N.W., as shown by pages
19 A1 and A2 of the October 7, 2011 PUD
20 modification submission prepared by Shalom
21 Baranes Associates and cannot be at a different
22 location, larger, vertically mounted on the

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1 facade of the hotel or illuminated from within.

2 And there's commas, I used to teach
3 English, there's commas between each of those
4 series so they stand individually and it does
5 say you know it cannot be at a different
6 location.

7 MS. BRAY: And again, just for
8 clarification, it's your understanding that
9 this filing was responding to the evidence and
10 testimony that was presented at the hearing?

11 MS. HARMON: Yes, it was.

12 MS. BRAY: Thank you. I have no
13 further questions. I don't know if there's any
14 cross of Ms. Harmon.

15 CHAIRMAN JORDAN: Any cross on
16 this?

17 MR. POSTULKA: I do. I just want
18 to clarify something. At the time you
19 submitted this letter were you aware of the
20 plans for the sign at the top of the building?

21 MS. HARMON: I am not Rebecca
22 Kota, I'm Florence Harmon so I didn't submit

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1 this letter.

2 MR. POSTULKA: Okay. Do you know
3 if the ANC was aware of the plans for the sign
4 at the top of the hotel?

5 MS. HARMON: I think the ANC -- I
6 can't read into Rebecca's mind, but I do know
7 that it was our understanding that there would
8 be no sign at the top of the building but we just
9 wanted to make this crystal clear because we had
10 constituents who were so concerned about this
11 particular issue.

12 MR. POSTULKA: Okay. That's it.

13 CHAIRMAN JORDAN: Okay. All
14 right. So we will conclude this hearing and
15 we're taking with the case the motion for
16 dismiss. We'd like to have proposed finding of
17 facts and conclusions of law from all parties
18 in this matter. Mr. Moy, let's get a date and
19 work our way backwards please.

20 MR. MOY: Mr. Chairman, I think
21 again for the Board with respect to the
22 caseload--

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1 CHAIRMAN JORDAN: Thank you for
2 respecting the caseload.

3 MR. MOY: I would not have to go
4 into November. I think we can work and just
5 really handle this for October 28th for
6 decision and work backwards from there in terms
7 of your filing time.

8 CHAIRMAN JORDAN: Okay. Since
9 there are finding of fact and conclusions of law
10 and there's no need for exchange of documents
11 or response thereof, so you said the 28th?

12 MR. MOY: Yes sir.

13 CHAIRMAN JORDAN: So they need to
14 be into the Board by the 21st? Would that work
15 for you?

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

17 CHAIRMAN JORDAN: All right. As
18 long as it works for you we'll be okay.

19 MR. MOY: The staff serves the
20 Board, Mr. Chairman.

21 CHAIRMAN JORDAN: I know, I'm just
22 joking with you. And we appreciate it. So

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1 October 21st please submit proposed findings of
2 fact and conclusions of law, this is going to
3 be for decision on October 28th. Okay? Thank
4 you all for the time and the courtesies to the
5 Board and to one another and we appreciate it
6 and we have to dig in.

7 If the Chairman knew how to write
8 these orders in such a way from the Zoning
9 Commission -- no, anyway, we really appreciate
10 it and we understand.

11 COMMISSIONER HOOD: My parents
12 taught me sometimes you just don't respond and
13 I'm not going to respond.

14 CHAIRMAN JORDAN: No, they work so
15 hard, they really do. And he knows I think that
16 always, especially like the cases that they
17 have to deal with fast and furious.

18 But again thank you all for coming.

19 MS. BRAY: Thank you.

20 CHAIRMAN JORDAN: We have one
21 other item of business for the Board. You're
22 already out the door. She's all packed up and

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1 ready to go.

2 In accordance with Section 405.c
3 the open [inaudible] act of D.C. Official Code
4 Section 257C, I move that the Board of Zoning
5 Adjustment hold closed meetings on Monday,
6 October 6th, 20th and 27th. These meetings are
7 to start at 4 p.m. and are to be held for the
8 purpose of obtaining legal advice from our
9 counsel and deliberated upon without voting on
10 cases scheduled to be heard or decided by the
11 Board the day after those closed meetings.

12 These cases are identified in the
13 Board's Public Hearing Agenda for October 7th,
14 21st and 28th. A closed meeting for this
15 purpose is permitted under the law. Is there
16 a second?

17 VICE CHAIR ALLEN: Second.

18 CHAIRMAN JORDAN: Motion made and
19 second. Mr. Moy, would you poll the Board.

20 MR. MOY: Yes sir. When I call your
21 name if the members can respond with yes or no
22 yay or nay. Mr. Hood?

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1 COMMISSIONER HOOD: Yes.

2 MR. MOY: Ms. Heath?

3 COMMISSIONER HEATH: Yes.

4 MR. MOY: Chairman Jordan?

5 CHAIRMAN JORDAN: Yes.

6 MR. MOY: Vice Chairperson Allen?

7 VICE CHAIR ALLEN: Yes.

8 MR. MOY: And Mr. Hinkle is not
9 present today. The motion carries, Mr.
10 Chairman.

11 CHAIRMAN JORDAN: As it appears
12 that the motion has passed I request that the
13 Office of Zoning provide notice of these closed
14 meetings in accordance with the law.

15 And any other business?

16 MR. MOY: Not today, sir.

17 CHAIRMAN JORDAN: Thank you.
18 We're adjourned.

19 (Whereupon, the Public Hearing of
20 the Board of Zoning Adjustment was concluded,
21 and went off the record at 12:38 p.m.)

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