

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JANUARY 13, 2015

+ + + + +

The Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220
South, 441 4th Street, N.W., Washington, D.C.,
20001, pursuant to notice at 10:25 a.m., Lloyd
Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Zoning Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

ALLISON MYERS, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on January 13, 2015.

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

(10:25 a.m.)

CHAIR JORDAN: Mr. Moy, would you please call 18894 please?

(Off record comments.)

Application No. 18894

MR. MOY: All right. To the witness table, Application No. 18894. This is the application of Mervin Richard and Judith Brodie. As advertised and publicly noticed, this is a request for a special exception under Section 223, not meeting the rear yard requirements, 404, and side yard requirements under Section 405. This is what has been advertised, Mr. Chairman.

CHAIR JORDAN: All right, thank you. Please identify yourselves please.

MR. RICHARD: I'm Mervin Richard, one of the home owners.

MS. BRODIE: Judith Brodie, home owner.

MR. CROSS: I'm Mark Cross with MJCI on behalf of the home owner.

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1 MR. ENGEL: David Engel, Advisory
2 Neighborhood Commissioner 3G-05.

3 CHAIR JORDAN: And who's for the
4 Applicant?

5 MR. CROSS: I'm representing the
6 Applicant, Mark Cross.

7 CHAIR JORDAN: Okay. That's Cross did
8 you say?

9 MR. CROSS: C-R-O-S-S.

10 CHAIR JORDAN: Oh Cross. Okay. Mr.
11 Cross, it appears that -- I don't know if you had
12 a discussion with the Office of Planning or anyone
13 else, that this appears that it only needs to relief
14 from Section 404 and then 2001.3. Is that your
15 understanding?

16 MR. CROSS: It is.

17 CHAIR JORDAN: Okay. I know there was
18 a request for relief from 405 and then Section 199,
19 the definitions, which are not necessary. Let me
20 turn to OP. Is that your understanding too, Ms.
21 Brown-Roberts, that --

22 MS. BROWN-ROBERTS: Good morning, Mr.

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1 Chairman. Yes.

2 CHAIR JORDAN: Okay, very good. All
3 right. So then we'll deal with that issue. Does
4 the Board have any issues that they need to get
5 drilled down with the Applicant over?

6 In review of the documents that have
7 been filed, and we look at these things for hours
8 before we come out here, sometimes up to 12 hours
9 of our own individual time, that the documentation
10 submitted on this file would support the request
11 for relief as is, and that the Board doesn't have
12 any questions that they need to ask you regarding
13 this matter.

14 You have support from Office of
15 Planning, Department of Transportation and the ANC
16 on this. So you have the opportunity to do a
17 presentation to the Board if you think it's
18 necessary. But I'm saying it's not necessary, and
19 the only thing you can do is work yourself down.

20 (Laughter.)

21 CHAIR JORDAN: If you have to say
22 something, and then we say what, and then here we

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1 go. And we will take that as you're waiving your
2 part of the hearing, and we'll just move on to the
3 Office of Planning.

4 MR. CROSS: Okay.

5 MS. BROWN-ROBERTS: Thank you, Mr.
6 Chairman, and we stand on the record for
7 recommendation of approval.

8 CHAIR JORDAN: Very good, thank you.
9 Is there any question the Board has of Office of
10 Planning? Does the Applicant have any questions
11 of the Office of Planning? Okay. Any questions
12 of the Office of Planning or the ANC? No. Is
13 anyone here from the Department of Transportation
14 for this particular matter? Anyone here from the
15 Department of Transportation on this matter?

16 We do have a letter of no objection to
17 the relief being requested from the Department of
18 Transportation, and we do have a representative
19 here from ANC 3 -- which ANC?

20 MR. ENGEL: 3G.

21 CHAIR JORDAN: 3G. I thought it was --

22 MR. ENGEL: ANC-4G, Mr. Chair.

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1 CHAIR JORDAN: Right. I thought
2 that's what it was. We do have the recommendation
3 that was approved by a vote of 7 to 0 in support.
4 Is there anything you want to add to that?

5 MR. ENGEL: No sir.

6 CHAIR JORDAN: Okay. Board, any
7 questions of ANC? Applicant, any questions of
8 ANC? All right. Is there anyone wishing to speak
9 in support of the application? Anyone wishing to
10 speak in support? Anyone wishing to speak in
11 opposition? You two are here for -- it's your
12 house. Okay, got it. I was really missing it this
13 morning. You can speak against it if you want.

14 (Laughter.)

15 CHAIR JORDAN: All right. I did say
16 anyone in support, anyone in opposition. Going
17 once, going twice, gone. So then we will close the
18 hearing based upon what's in the record and what's
19 been deduced here at this hearing, and I would move
20 that we grant the relief, the modified relief in
21 Case 18894, that being relief from 404 and 2001.3.

22 VICE CHAIR ALLEN: Second.

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1 CHAIR JORDAN: Motion made and second.

2 Any discussion?

3 (No response.)

4 CHAIR JORDAN: All those in favor aye?

5 (Chorus of ayes.)

6 CHAIR JORDAN: Those opposed nay, and
7 the motion carries.

8 MR. MOY: Staff would record the vote
9 as 4 to 0. This is on the motion of Chairman Jordan
10 to approve the amended relief, request for the
11 amended relief. Second the motion, Vice Chair
12 Allen. Also in support Mr. Hood and Ms. Heath. We
13 have no other Board members present this morning.
14 The motion carries sir.

15 CHAIR JORDAN: Okay. Summaries
16 please.

17 MR. MOY: Thank you.

18 MS. BRODIE: Thank you.

19 MR. CROSS: Thank you.

20 CHAIR JORDAN: Thank you. I
21 appreciate it. Let's call -- no, you know what?
22 Let's call 18861 please.

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1 Application No. 18861

2 MR. MOY: To the table would be
3 Application No. 18861 of Justin and Margaret
4 Kitsch. As advertised, and I believe it may have
5 been amended, but anyways this, as the Board will
6 recall, was continued from the November 18th
7 hearing.

8 This is request for variances for from
9 non-occupancy, Section 403 and rear yard, Section
10 404, requiring a rear deck addition.

11 CHAIR JORDAN: Yes. It's been
12 modified. Relief from a variance is a special
13 exception, Mr. Moy.

14 MR. MOY: Yes, thank you.

15 CHAIR JORDAN: Please identify
16 yourselves.

17 MR. LAWRENCE: My name is Mark
18 Lawrence, architect of the owner.

19 MR. KITSCH: Justice Kitsch,
20 Applicant.

21 CHAIR JORDAN: Okay. All right.
22 This is a matter which we've actually held a hearing

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1 on before, and we've gone through and you went back
2 and heard the discussion and you've modified and
3 amended your request for relief from a variance to
4 a special exception, and I think it's now ready to
5 proceed on.

6 I think -- yeah, I don't have any other
7 questions about it. Office of Planning has
8 changed their recommendation, based upon the
9 modification. You've worked this thing out.
10 Board members, is there any questions you have on
11 this?

12 ZC CHAIR HOOD: And I'll just note that
13 I have reviewed the record. I'm not sure if I was
14 here previously, but I have -- I reviewed the case
15 where the variance changed from not supporting to
16 being a supporter of the special exception. I just
17 want to put that on the record.

18 CHAIR JORDAN: Thank you. It was
19 heard in November. We actually had a hearing on
20 it on November 18th, 2014.

21 ZC CHAIR HOOD: I just wasn't sure
22 whether I was here or not.

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1 CHAIR JORDAN: I appreciate that, I
2 appreciate it. So you have an opportunity to
3 proceed on or, you know, do a presentation. You've
4 already done a presentation. You've kind of
5 cleaned up the act, and so I take it that we can
6 just move on. Is that right? Okay.

7 Good. Then we will turn to the Office
8 of Planning and see if there's -- Mr. Gyor, if
9 there's anything else you have first?

10 MR. GYOR: Good morning Mr. Chairman
11 and members of the Board. Stephen Gyor with the
12 Office of Planning. We support the modified
13 application and we'll stand on the record. Thank
14 you.

15 CHAIR JORDAN: Good, thank you. All
16 right. Is there anyone here from ANC-6? ANC-6C
17 has previously voted in support of this
18 application, and the Department of Transportation
19 has submitted a letter of no objection. We also
20 had three letters of neighbors in support.

21 So is there anyone here wishing to speak
22 in support of this application? Anyone wishing to

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1 speak in support?

2 (No response.)

3 CHAIR JORDAN: Anyone wishing to speak
4 in opposition? Anyone in opposition?

5 (No response.)

6 CHAIR JORDAN: We will close the
7 hearing based upon the record that's before the
8 Board, and I would move that we grant the amended
9 relief under 18861 for the special exception.

10 VICE CHAIR ALLEN: Second.

11 CHAIR JORDAN: Motion made and second.
12 Any discussion?

13 (No response.)

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

16 (Chorus of ayes.)

17 CHAIR JORDAN: Those opposed nay. The
18 motion carries. Mr. Moy.

19 MR. MOY: Staff would record the vote
20 as 4 to 0. This is on a motion by Chairman Jordan
21 to approve the amended relief for a special
22 exception under Section 223, not meeting the yard

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1 occupancy in the rear yard. Did I say that right?

2 Also in support or rather supporting
3 the motion, seconding the motion, Vice Chairperson
4 Allen. Also in support Mr. Hood and Ms. Heath. A
5 Board member not present. Motion carries sir.

6 CHAIR JORDAN: All right. Summary
7 please.

8 MR. MOY: Thank you.

9 CHAIR JORDAN: Let's do the first case
10 please, 18893.

11 Application No. 18893

12 MR. MOY: Application No. 18893 of
13 Ridge Lofts, LLC. This is a request for a variance
14 relief from the parking requirements under Section
15 2101.1, as advertised.

16 CHAIR JORDAN: Okay. Please
17 introduce yourselves again for me please.

18 MS. REATIG: Hello. I'm Noonie Reatig
19 from Suzane Reatig Architecture, representing
20 Ridge Lofts, LLC.

21 MS. BARRINEAU: And I'm Erin Barrineau
22 from Suzane Reatig Architecture.

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1 CHAIR JORDAN: All right, okay. It's
2 another which I think, based upon the
3 circumstances, which has been already pled to the
4 Board in the documentation, that there's probably
5 enough here to grant the relief. The Board takes
6 very, very seriously granting parking relief.

7 But I think this is one where the fact
8 that it doesn't have alley access, and you can't
9 get curb cuts and etcetera, and then it's so close
10 to the Metro, that it's one in which I can stand
11 on what's already been filed. I don't know if
12 other Board members have questions, and it might
13 be the better way to do it, as opposed to you doing
14 a full presentation. Questions anyone?

15 (No response.)

16 CHAIR JORDAN: Wow, it must really be
17 relief, because I knew it couldn't get past you
18 Kathryn.

19 VICE CHAIR ALLEN: I'm sorry. Can you
20 just -- I know it's stated that there's not support
21 for new curb cuts. But can you just talk to that
22 for a second? Never mind.

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1 (Off record comments.)

2 CHAIR JORDAN: Yeah, okay. So you
3 have the opportunity to do a presentation if you
4 wish. I think we're already at the point where you
5 need to be for getting the relief that's necessary.

6 MS. REATIG: Thank you, Chairman
7 Jordan. I'll be happy to answer any questions.

8 CHAIR JORDAN: And you'll also have the
9 opportunity to come back if anything comes up in
10 the interim for rebuttal. All right. So then
11 let's move to Mr. Jessick on the Office of Planning.

12 MR. JESSICK: Thank you Mr. Chairman,
13 members of the Board. My name is Matt Jessick.
14 The Office of Planning supports the application and
15 rests on the record. I'd be happy to take any
16 questions.

17 CHAIR JORDAN: Board, any questions of
18 Planning?

19 (No response.)

20 CHAIR JORDAN: The Applicant, any
21 questions of Planning?

22 (No response.)

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1 CHAIR JORDAN: All right. We have a
2 letter from the Department of Transportation.
3 There's no objection to the requested relief. Oh,
4 I don't -- do we have anything from ANC-6E? Did
5 we -- okay. I'll check that. Do we?

6 MR. MOY: Yes, we do. Sorry. Yes,
7 we do.

8 CHAIR JORDAN: Okay. I didn't see it
9 when I went through the record.

10 MR. MOY: It is -- it was submitted
11 yesterday, Mr. Chairman. I have a copy here
12 somewhere.

13 CHAIR JORDAN: Ahh, that's the issue.

14 MR. MOY: And I think we were signed
15 by Chairman Padro.

16 CHAIR JORDAN: And while you're
17 checking also, did we get a letter of
18 authorization? You filed a letter of
19 authorization in this case?

20 MS. REATIG: Yes, yesterday.

21 CHAIR JORDAN: Ah. See, let me tell
22 you. These things need to get in, you know, well

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1 in advance of these hearings. We spend a lot of
2 time going through these cases, you know. Like I
3 said before, some time up to 12-14 hours
4 individually, and I go through these things well
5 in advance.

6 So to have the documentation is
7 important, and one thing this Board has not been
8 trying to do is to get things last minute. We used
9 to get things, you know, 15-16 hundred pages last
10 minute, which can change the whole complexion of
11 what has been offered to the Board, and it's just
12 not fair to the citizens or to the Applicant to do
13 that.

14 So but the letter of authorization,
15 we'll accept that, and the ANC is saying what? Let
16 me see what the bottom line is for this.

17 (Off record comments.)

18 CHAIR JORDAN: Yeah. See, that's the
19 other thing. We just got this ANC letter
20 yesterday, and you've got to kind of read it over
21 again to find out where they are. But this
22 letter's been out since October 11th, 2014. Did

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1 you have a copy of the letter?

2 MS. REATIG: No, I did not.

3 CHAIR JORDAN: Okay, let me read this.

4 "At the Commission's meeting, duly noticed and with
5 the case listed in the notice, with a quorum
6 present, four out of seven Commissioners required
7 to be in attendance to achieve a quorum, ANC-6E
8 voted 4 in favor, 2 opposed and no abstentions to
9 oppose the request for zoning relief at 448 Ridge,
10 to allow construction of a four family flat, okay,
11 and that said opposition be communicated in writing
12 to the Board of Zoning Adjustment.

13 "In consideration, the result of
14 questioning the Applicant's representative
15 presented, the Commission determined that the lot
16 in question are located in a single-member district
17 6E. The four lots are zoned R-4 and are vacant.

18 "The applicant proposes to construct"
19 -- that doesn't help me. All right. So the ANC
20 has voted in opposition to this. Is there anybody
21 here from ANC-6E on this matter? Yes, please come
22 forward, uh-huh. Okay, good. Welcome back, and

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1 give us your name again please?

2 MS. NIGRO: Rachelle Nigro. I'm the
3 Advisory Neighborhood Commissioner for ANC-6E04,
4 which is the single member district where this
5 project is.

6 CHAIR JORDAN: Okay, and are you to
7 speak for the -- are you authorized to speak for
8 the full ANC, or you're just speaking for your
9 single member district.

10 MS. NIGRO: Speaking for the single
11 member district.

12 CHAIR JORDAN: Okay, that's fine.

13 MS. NIGRO: But as you know, we didn't
14 oppose --

15 CHAIR JORDAN: And I did not see in the
16 letter that they were designating you to speak for
17 the Commission. That's the only reason why I asked
18 that.

19 MS. NIGRO: Correct, correct.

20 CHAIR JORDAN: Okay. But you -- well,
21 let me do this then. All right. So we have that.
22 Now we're at a point of asking anyone who wants to

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1 speak in support of this application to come
2 forward. Anyone speaking in support?

3 (No response.)

4 CHAIR JORDAN: Anyone to speak in
5 opposition? Okay. All right. We have two
6 oppositions. Is that where we're at? Okay, come
7 up. Okay, Please proceed.

8 MS. NIGRO: I just want to reiterate
9 that the Commission voted not to support the
10 request for a variance, and just to speak as a
11 single member district representative, when I
12 became Commissioner over four years ago now, you
13 know, I had grandiose ideas that I'd be worried
14 about education and crime and all this type stuff.

15 My number one concern for our area is
16 always parking. I literally talk about it every
17 day. I get emails every day about it. I'm stopped
18 on the street about it every day, and I'm called
19 about it every single day, for more than four years.
20 It is my number one concern for our area.

21 Now I understand that a lot of projects
22 in that area, they've been smaller, lots of land.

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1 Clearly, there has been room for cars, etcetera.
2 This project is different. It is a larger space.
3 There are clearly room for some parking spaces.

4 And as my constituents say with every
5 new project that comes up, where's the parking?
6 Where's the parking, where's the parking? You
7 must support parking. So hence, this is why I'm
8 here to say, you know, for your support, that this
9 is what my constituents want.

10 With any larger project certainly, they
11 would like, you know, parking to be available.
12 More than one car helps, you have no idea. It's
13 like it's literally off the chart in our area.

14 CHAIR JORDAN: Yeah, and we take very,
15 very seriously. Like I said in my little preamble,
16 that we look at parking hard. However, there's
17 some situations here that allow for this, and while
18 I have you here, which gives me some further concern
19 about just getting the ANC letter, let me read the
20 last paragraph of the ANC letter.

21 "In considering the case, and as a
22 result" -- and I know you're not representing the

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1 full ANC -- "In considering the case, and as a
2 result of questioning the applicant's
3 representative present at said meeting, and at
4 prior Zoning and Planning Committee meetings, the
5 Commission determined the following:

6 "The lot in question are located in
7 Single Member District 6E04, and located in the
8 Shaw Historic District. The four lots are zoned
9 R4 and are vacant. The applicant proposes to
10 construct four two unit flats on four lots for a
11 total of eight units.

12 "The lots have no alley access. As the
13 lots are located in a historic district, curb cuts
14 will not be approved by the D.C. Historic
15 Preservation Office, and D.C. Historic
16 Preservation Review Board. It is therefore
17 impossible for the lots to be developed if the
18 parking requirement is not waived."

19 "This is the finding of the ANC. In
20 order for this development to take place, an area
21 variance under 11 DCMR 3101 from a parking
22 requirement is necessary. 6. The ANC Zoning and

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1 Planning Committee met and recommended that the
2 Commission support the granting of the parking
3 relief, noting that there is strenuous opposition
4 to curb cuts at the location in question.

5 "The Commission says" -- then it says
6 number seven, "The Commission opposes the grant of
7 the requested relief."

8 MS. NIGRO: The only way I can speak to
9 that, I did not write that, and as you stated, it
10 doesn't really make a lot of sense. It's not
11 clear.

12 CHAIR JORDAN: Oh, I didn't say that.

13 MS. NIGRO: Okay. Well, I can say
14 that. I can say that because I know Commissioner
15 Padro. But that said, that the voting in the end
16 did speak for itself, that there was opposition for
17 support. And I can't relate more.

18 CHAIR JORDAN: I understand, I
19 understand.

20 MS. NIGRO: This is why I'm here. They
21 say you must go speak for us. This is all of my
22 people I hear constantly in my ear literally, and

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1 some of them really scream about it.

2 CHAIR JORDAN: And we're hard on
3 parking, and certainly like I said, if Ms. Allen
4 certainly agrees and she's as tough as nails
5 regarding parking, then we all are. But this is
6 one which, as I said earlier, might provide for it.
7 We appreciate it. Any questions Board?

8 (No response.)

9 CHAIR JORDAN: Thank you. Applicant
10 any questions of --

11 (No response.)

12 CHAIR JORDAN: No, all right. Mr.
13 Kendrick, please.

14 MR. KENDRICK: I've prepared a written
15 statement. I can approach you and give you my
16 text.

17 CHAIR JORDAN: Yes. Please give it to
18 the Secretary of the Board please. Okay. Please
19 be seated. We're giving you -- how much time do
20 you think you need, three minutes?

21 MR. KENDRICK: I have -- I mean this is
22 like one page, but I have a couple of questions that

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1 I'd like to probably direct to the Office of
2 Planning.

3 CHAIR JORDAN: You can't do that. You
4 can read your statement.

5 MR. KENDRICK: Okay. Thank you, Mr.
6 Chairman, for the opportunity to speak before you
7 today at the Board of Zoning Adjustments. It's
8 been a long time since I've done this, so I'm a
9 little nervous today.

10 CHAIR JORDAN: Relax, we don't bite.
11 Take your time. Everybody's in the same boat.

12 MR. KENDRICK: Okay. You already
13 shouted me down one time today.

14 CHAIR JORDAN: Oh no, no, no.

15 MR. KENDRICK: Okay. I'm here today
16 to --

17 CHAIR JORDAN: Was it a pleasant
18 encounter?

19 (Simultaneous speaking.)

20 MR. KENDRICK: I'm here today to speak
21 in opposition to the battle before you. I live at
22 444 Ridge Street, which is directly next door to

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1 this project. I'm the past president of the Mount
2 Vernon Square Neighborhood Association, which
3 doesn't seem to be active anyone, and I've been in
4 the neighborhood for about 22 years.

5 I've advocated for planning and for
6 development in our neighborhood. So I'm not
7 anti-development. I'm not opposed to all
8 development projects. To my comments, the
9 Applicant proposes to build eight unit houses --
10 can you still hear me?

11 CHAIR JORDAN: Yes, we do.

12 MR. KENDRICK: Eight unit houses on
13 four lots. Based on the proposed plan, the
14 Applicant would need four parking spaces in order
15 to comply with the parking requirements outlined
16 in Section 2101.1.

17 Realistically, four parking spaces for
18 eight two bedroom units won't be sufficient to meet
19 the true demand. If history is any indicator, if
20 this project is completed as planned, at the
21 minimum eight cars will be added to an already
22 overcrowded street.

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1 460 through 462 Ridge Street, which is
2 also down the block from this location, is
3 currently under construction. The parking
4 requirements there were also waived for that
5 project, and it will have approximately six units
6 after it's completed. It's already under
7 construction.

8 This project further complicates the
9 parking situation on Ridge Street. I'm sure the
10 Board reviews a lot of project requests for parking
11 variances. But what sets our neighborhood apart,
12 the Mount Vernon Square Neighborhood Association,
13 is that it's home to the Washington Convention
14 Center, as we all know.

15 And as the city markets the Convention
16 Center as the third largest convention center on
17 the East Coast, and it's also the eighth largest
18 convention center in the country, and to add to
19 that, it has no parking.

20 Even though it sits atop the Metrorail,
21 convention goers still park in our neighborhood,
22 for the health fair that's very popular, the auto

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1 show, the defense contractor fair, inaugural balls
2 or whatever large show happens to be in town.

3 Most of the neighborhoods where parking
4 variances might easily be approved don't face such
5 repeated inconveniences. I urge you not to add to
6 our misery. Deny this parking variance. The
7 development site under consideration is adjacent
8 to a vacant lot, which undoubtedly will be
9 developed at some time.

10 This would be a great opportunity to day
11 to set a precedent for developing single lots with
12 single structures. Once again, I ask that you deny
13 this variance. The record should reflect that the
14 ANC voted to oppose the variance, after heeding the
15 concerns of our residents.

16 If the scope of the project is reduced
17 to four units on four lots, the parking pressures
18 on the neighborhood would not be as great, and would
19 address most of the concerns about the project.
20 I'll take any questions you might have.

21 CHAIR JORDAN: Board, any questions?

22 ZC CHAIR HOOD: So Mr. Kendrick, your

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1 assumption is that each resident will have a
2 vehicle. That's what your assumption is your
3 testimony?

4 MR. KENDRICK: Yeah. I mean to think
5 that the eight units that will actually be built,
6 and I think they're two bedrooms each, you know,
7 the probability is probably going to say that most
8 people who usually move into our neighborhood, they
9 bring their cars with them. History hasn't shown
10 us that they automatically ditch their cars.

11 ZC CHAIR HOOD: Okay. So if we have
12 eight units, and what you're saying if you have
13 eight units and four cars, that's less of an impact.
14 I mean that's common sense. But suppose they don't
15 have any cars, and there's no way you can measure
16 that, because I'm sure you're not going to knock
17 on doors and see who has a car and who doesn't have
18 a car.

19 Mr. Chairman, let me go back to the ANC
20 Commissioner. I'm trying to understand this,
21 because really for granting the relief, Vice Chair,
22 it looks as though the letter, depending upon --

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1 and Mr. Padro is seasoned. I know Mr. Padro. It
2 looks as though the letter makes the case.

3 MS. NIGRO: It might make the case in
4 terms of certain Commissioners, that voted for the
5 project or for the relief. But I can state that,
6 and I am really apologetic that Alex wrote the
7 letter that way, because clearly it probably should
8 not have been written that way, because there is
9 absolutely opposition to this.

10 ZC CHAIR HOOD: These are your
11 constituents, though. This is --

12 MS. NIGRO: Right.

13 ZC CHAIR HOOD: Did you meet with your
14 constituents?

15 MS. NIGRO: Oh, I met with the
16 constituents all the time. I am known to be on the
17 street. I talked to them on the phone. I use
18 social media, and I would like to just -- as Tip
19 referred to, when people come in the neighborhood,
20 you know, the mantra is everyone's walking, riding
21 their bikes, etcetera, etcetera. That is
22 absolutely not true. Cars are still being brought

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1 in.

2 ZC CHAIR HOOD: I understand.

3 MS. NIGRO: And then as far as the Metro
4 goes, we are the Metro's parking lot. I have
5 people parking on sidewalks in my area. It is that
6 bad sometimes.

7 ZC CHAIR HOOD: So the paid lots down
8 there where people park, you all don't object to
9 people coming in with cars and park in those lots?

10 MS. NIGRO: But if you're coming to the
11 Convention Center for XYZ food show, you're driving
12 around, you're going to look for the free parking
13 spot and that is in 6E04.

14 ZC CHAIR HOOD: But my question is, you
15 don't object to people parking in the paid lots?

16 MS. NIGRO: Correct.

17 ZC CHAIR HOOD: Okay, because that's
18 what I did when I went to the ball. I just wanted
19 to make sure.

20 MS. NIGRO: And we commend you for
21 that.

22 ZC CHAIR HOOD: Thank you. Okay,

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1 thank you Mr. Chairman.

2 CHAIR JORDAN: Yeah, go ahead.

3 VICE CHAIR ALLEN: Thank you for your
4 testimony. I have a question for the Applicant.
5 Is it possible to reduce the number --

6 CHAIR JORDAN: Let's go back to that
7 when we get to rebuttal.

8 VICE CHAIR ALLEN: Oh, okay.

9 CHAIR JORDAN: Yeah. I thought you
10 were going to talk to -- but let me ask Mr. Kendricks
11 a question. Is there residential parking permits
12 allowed in that area?

13 MR. KENDRICK: Yeah, I believe they
14 are.

15 CHAIR JORDAN: Okay. Are there any
16 parking lots in short walking distance, for
17 commercial parking lots?

18 MR. KENDRICK: I think that there's one
19 on K Street. That's the main one. That's
20 probably the one that you used. But on Ridge
21 Street or M Street, there's nothing around there
22 commercially.

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1 CHAIR JORDAN: Okay, okay. All right.
2 I appreciate that. All right. So any other
3 questions for Mr. Kendricks? Board. Then let's
4 go to the Applicant for rebuttal, and I certainly
5 have some questions.

6 ZC CHAIR HOOD: I do have a question to
7 the Vice Chair again, I'm just curious. I'm just
8 curious. Mr. Padro, was he in favor? Where was
9 he?

10 MS. NIGRO: Mr. Padro is for support of
11 the variance.

12 ZC CHAIR HOOD: Okay, thank you.

13 MS. NIGRO: He was one of the two that
14 voted. So it's clear how he wrote the letter.

15 CHAIR JORDAN: But he's a very diligent
16 guy, and he really works hard in regard to looking
17 at these things. Going to the Applicant in
18 rebuttal, let me ask a couple of things. One,
19 these are flats?

20 MS. REATIG: Correct.

21 CHAIR JORDAN: And hearing the issues
22 and concerns, but I really do see the issue about

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1 the uniqueness of this property and practical
2 difficulty. One thing that I'm thinking about and
3 I'm sorry, did I cut you have to -- what I'm thinking
4 about is a couple of things, what we've done.

5 We're very serious about parking, the
6 effect upon the neighborhoods. But we also know
7 we have four vacant lots in this community too that
8 can serve another purpose, etcetera, to be built
9 as flats. Let me tell you what I'm thinking, and
10 I want to hear your concern about it.

11 One, that this property would be
12 listed, that it cannot receive residential parking
13 permits for any of the people who may move in, live
14 in this facility is one. Two, I'm thinking that
15 this should be -- by lease, this should be a no car
16 building. These should be no car properties. Let
17 me get your feedback on those.

18 MS. REATIG: Okay. First of all, I'd
19 like to explain the context, that it's four
20 separate, four lots, and originally we wanted to
21 develop these lots by right completely, and we
22 first met with Historic Preservation to talk to

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1 them about the pre-design, and see what was
2 possible. We met with Brendan Meyer (phonetic)
3 from Historic Preservation, and he -- first thing
4 he told us was that no curb cuts would be approved.

5 We've been working with him on the
6 design, to have something that would be compatible
7 for the street. Each one of these lots, according
8 to zoning, only allows for one flat per lot. So
9 that's two units, and in order to satisfy the
10 parking requirement, the only way to satisfy it
11 would be to have one parking space per lot entered
12 from the sidewalk, from the Ridge Street front.

13 If that was the case, then four parking
14 spaces would be taking away from Ridge Street.
15 Something that I did want to mention --

16 CHAIR JORDAN: Excuse us. Actually,
17 we are listening, so -- we're listening.

18 MS. REATIG: Okay. So the previous
19 life of the site, there was a community service
20 center there, and there was a BZA case in 2004 that
21 was approved and lasted for ten years. That was
22 prior to when we acquired the site. There was a

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1 daycare community center there, which received
2 parking relief and was found to meet all the
3 requirements to receive parking relief.

4 CHAIR JORDAN: But let me -- I
5 understand all of that. My question was very
6 pointed. I wanted your feedback on the fact that
7 if we may do this, I'm looking at how do we litigate
8 any impact upon the community? I think the --
9 you're going back to the original argument, and I
10 am with you on that. Others may not be.

11 MS. REATIG: Okay.

12 CHAIR JORDAN: And I think even some of
13 the ANC is on that too. But there is uniqueness
14 and the practical difficulty here. So my
15 questions to you were to look at some aspect, if
16 we were to go forward, how we mitigate it. The way
17 we've done it in the past on some properties is that
18 the --

19 Either we can issue it by condition, or
20 we certainly want your input, and I'm thinking that
21 we would make these four lots. These four
22 properties would be -- could not receive

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1 residential parking permit and we would put that
2 in the order. The other side of it is that you
3 would put in the lease of these -- put in the lease
4 of the tenants that they could not have cars.

5 MS. REATIG: We hope that that is not
6 the case.

7 CHAIR JORDAN: Well, why wouldn't you?

8 MS. REATIG: Because this site is
9 different, in the sense that it's not one site, it's
10 not one big project, but it's four individual
11 houses and --

12 CHAIR JORDAN: That potentially impact
13 the neighborhood.

14 MS. REATIG: Yes and --

15 CHAIR JORDAN: And part of your
16 argument in support of this, in saying the
17 mitigation of the issue is that you're in a
18 transportation-enriched area.

19 MS. REATIG: Correct.

20 CHAIR JORDAN: So why should it matter?

21 MS. REATIG: One second.

22 CHAIR JORDAN: You could go for a home

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1 run, or you can go for a triple or double is what
2 I'm saying to you. I don't know if you watch
3 baseball or in terms of football. You can go for
4 a touchdown on the one pass, or you can try to get
5 a first down.

6 ZC CHAIR HOOD: Mr. Chairman, can I
7 just -- let me just say this, and you can finish
8 your case. But I will tell you in your
9 explanation, I would be in more support of the
10 latter, because the first statement that we
11 mentioned about RPP, and it's something we just
12 dealt with them last night.

13 Unfortunately, Ridge Road is doable.
14 It's not enforceable by DDOT. So the latter part
15 being the leases is where we really should be
16 aiming.

17 CHAIR JORDAN: And what we've -- and we
18 also have -- with DMV, we've had the conversation.
19 We actually had these things running with the land.
20 So it would probably be a combination of both if
21 we do.

22 ZC CHAIR HOOD: I just know -- trust me.

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1 This is tickler for me. I just know that DDOT and
2 the city does not enforce the first one that you
3 mentioned about -- and trust me. So I mean we can
4 sit here and put it down. But guess what? It
5 won't work.

6 CHAIR JORDAN: Does not, okay.

7 ZC CHAIR HOOD: It doesn't work.

8 MS. REATIG: I'd like to please add
9 that this street does not have a residential
10 parking program in place, and if there is a parking
11 issue, we're very familiar with the street.
12 During the week, there's no issue finding parking
13 spaces. There's lots of empty spaces.

14 When there is an issue, it's during the
15 weekend, when there is events at the Convention
16 Center or on Sundays, when people come from out of
17 town to attend many of the churches in the
18 neighborhood. We would argue that the parking
19 issues are not because of the residents in place.

20 CHAIR JORDAN: Okay. I'm confused.
21 I thought I asked a question and I think Mr.
22 Kendrick, you said there was RPP in the

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1 neighborhood. Am I wrong? Yeah.

2 MS. NIGRO: Technically we have --

3 MR. MOY: Make sure your mic is on
4 please.

5 MS. NIGRO: Currently, we only have
6 Zone 2, Zone 6. Right now we have -- in the DDOT
7 system, we have four blocks that are up for
8 residential parking permits, and it's part of the
9 process with the DDOT. It's part of their
10 examination process.

11 So it has not -- it's far from approval,
12 but how we got to that point is that my constituents
13 were so utterly angry about parking that literally
14 four blocks went ahead and ran through the
15 neighborhood with their petitions, and it's
16 sitting with DDOT currently, but not at approval
17 status yet but pending.

18 And literally, as I said, it's every day
19 with me. So as far as enforcement, with any
20 parking I take care of that for my constituents on
21 a daily basis.

22 CHAIR JORDAN: Okay, thank you.

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1 MR. KENDRICK: Can I answer that, Mr.
2 Chairman or I don't know how appropriate --

3 CHAIR JORDAN: Go ahead, go ahead.

4 MR. KENDRICK: I just wanted to say
5 that I understand it is -- this is something that
6 we've faced with other projects, because like she
7 said, it is landlocked, and so it creates certain
8 difficulties. You can't do the curb cuts because
9 it's an historic district. But if we were allowed
10 to do curb cuts, the massing and the density on the
11 site is what's really the concern.

12 If you were able to do the curb cuts,
13 you wouldn't be able to do eight units on the sites,
14 because you would have to put the cars there.
15 That's one of the reasons why I like the idea of
16 four units on four lots, because it brings down the
17 density and addresses some of our concerns about
18 parking.

19 CHAIR JORDAN: Okay. Board, any other
20 questions? Anything else on rebuttal?

21 MS. REATIG: Yes. I would just like to
22 add one more thing. When the site was acquired in

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1 2013, there were four dedicated on street parking
2 spaces used with the community service center, and
3 they were immediately returned back to the street.

4 CHAIR JORDAN: Okay, all right. Any
5 other questions Board? Anyone? Then we will
6 close the hearing, based upon what's been provided
7 here today. Is the Board ready to deliberate on
8 this case? Okay. This is one where I think there
9 has been a showing of uniqueness, by all the things
10 we said, and the practical difficulty, clearly this
11 is land-locked property.

12 It probably can't allow for curb cuts.
13 It's in a vacant lot area, and there's really some
14 need, as we've gotten from Office of Planning,
15 which we certainly give great weight to, a need for
16 development and it will support the community.

17 However, where this case might fall
18 down on is the impact upon the community. We've
19 heard tons of evidence in that regard about the
20 impact of parking regarding this case, and we have
21 the ANC letter, which has voted in opposition,
22 saying there's going to be some impact to the

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1 community.

2 However, as far as giving great weight
3 to the ANC letter we will do so. But the rebuttable
4 portion of that, I think the letter contains in and
5 of itself the portion about why relief should be
6 granted.

7 But I think that, based upon the
8 argument of the Applicant in its submissions,
9 that this is an area which doesn't encourage --
10 there's no need really for cars, because it's so
11 transportation-enriched, that they're so near the
12 Metro and all these other kind of things, that if
13 we were to grant this, that we would require the
14 condition of this building, that the lease be
15 maintained and that a covenant be placed to run with
16 the land, that there can be no cars at this facility
17 by any of the tenants.

18 That would be the way I would -- if we
19 were to go forward with it, that I would offer the
20 only way that I could see it happen.

21 ZC CHAIR HOOD: I would concur, Mr.
22 Chairman, and I think that's how we really achieve

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1 and balance some of the issues that are taken here,
2 because you know, there's a tipping point in this
3 area from what we've heard from the testimony.
4 Even I know how the letter was written.

5 So if I wanted to write a letter and I
6 didn't have the votes, I might write it like that
7 too. But I will tell you that I think the tipping
8 point is there. This community, as the Vice Chair
9 has mentioned, has talked to her constituents who
10 are most impacted, and I think it's our due
11 diligence to make sure we soften the load and not
12 just keep piling on. So I would concur with your
13 way of moving forward, Mr. Chairman.

14 CHAIR JORDAN: Any other -- Ms. Allen.

15 VICE CHAIR ALLEN: I do agree with my
16 colleagues. However, and if we vote to go forward
17 or accept the application, the obviously that would
18 be acceptable. My concern has been and continues
19 to be, and is especially in this case when we have
20 an ANC, we have neighbors that are concerned.

21 We have a neighborhood that is, I think,
22 past the tipping point, and I personally think it's

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1 -- I cannot, in good conscience, vote in support
2 of this project, where there is such opposition and
3 validly so. So I'm glad to hear that there's going
4 to be an attempt to mitigate the issue if it's voted
5 by my colleagues, but I personally cannot support
6 it.

7 CHAIR JORDAN: Yes.

8 MEMBER HEATH: I'll just add that I am
9 tending to be in support of this, with the condition
10 that no parking -- no cars are allowed by any of
11 the tenants as a part of the lease, because while
12 I completely respect the arguments of the
13 neighborhood, and I get that this is a very vehicle
14 dense and transportation rich neighborhood, I feel
15 like this is our way of mitigating the issue, and
16 I feel like we've satisfied the ANC and the
17 community's concerns.

18 I would hope that the community would
19 support development of these four sites, and
20 wouldn't want to see the four sites undeveloped and
21 continue to be vacant land. So my feeling is that
22 we are meeting the community's request by

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1 stipulating that there can't be any vehicles within
2 the tenant's leases.

3 CHAIR JORDAN: Any other discussion?
4 Then I would move that we grant the relief requested
5 in 18893, with the condition that the -- on the four
6 properties or the four lots one, that the following
7 condition should take place: That the lease of all
8 tenants must contain a provision to not allow --
9 that they cannot have cars and be at the property,
10 cannot have cars, period.

11 Two, that a covenant should be filed to
12 run with the land, that the properties are not
13 eligible to have cars, and that they also have no
14 RPP. Now that's -- if ever it gets enforced, if
15 it ever gets to that point, then it's already there,
16 Mr. Hood. That's the only reason why I'll put it
17 there.

18 ZC CHAIR HOOD: Yeah, that's fine.

19 CHAIR JORDAN: That would be my motion.

20 ZC CHAIR HOOD: I'll second it.

21 CHAIR JORDAN: Motion made and
22 seconded. All those in favor of the motion, aye?

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1 (Chorus of ayes.)

2 CHAIR JORDAN: Those opposed nay.

3 VICE CHAIR ALLEN: Nay.

4 CHAIR JORDAN: The motion carries.

5 Mr. Moy.

6 MR. MOY: Staff would record the vote
7 as 3 to 0, or rather 3 to 1. This is on the motion
8 of Chairman Jordan to approve the application for
9 the relief requested, with the two conditions as
10 cited by the Chairman. Also seconding the motion
11 Mr. Hood. Also support Ms. Heath, and we have Vice
12 Chair Allen opposed to the motion, and we have no
13 member present. So the motion carries, Mr.
14 Chairman, 3 to 1.

15 CHAIR JORDAN: Very good, and we thank
16 you all. I appreciate it. Thank you. We're
17 going to take a five minute break and then we'll
18 come back.

19 (Whereupon, the above-entitled matter
20 went off the record at 10:54 a.m. and resumed at
21 10:55 a.m.)

22 CHAIR JORDAN: Can we take 18888 next

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1 please?

2 Application No. 18888

3 MR. MOY: Yes sir. To the witness
4 table, representatives to Appeal No. 18888 of
5 Adams Morgan for Reasonable Development. This is
6 an appeal of the Zoning Administrator's decision
7 to issue Building Permit No. B as in Bravo 1309151,
8 that allows mixed use residential building with
9 ground floor retail in the C2B district, at 1700
10 Columbia Road, N.W.

11 CHAIR JORDAN: Okay. All right,
12 please identify yourselves.

13 MR. THOMAS: Make sure it is on, that's
14 right. Mr. Chairman and members of the Board, I'm
15 Charles Thomas. I'm the interim general counsel
16 for the Department of Consumer and Regulatory
17 Affairs. Just taking this moment to bring to the
18 Board's attention that we have, in addition to
19 Zoning litigation staff, attorney Max Tondro, and
20 he will be presenting the government's case from
21 today and onward to the Board.

22 CHAIR JORDAN: Okay.

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1 MR. LeGRANT: Good morning. I'm
2 Matthew LeGrant. I'm the administrator of DCRA.

3 MR. TONDRO: Maximilian Tondro,
4 Assistant General Counsel, DCRA.

5 CHAIR JORDAN: Tondro?

6 MR. TONDRO: Tondro.

7 CHAIR JORDAN: Okay.

8 MS. RODDY: Good morning. My name is
9 Christine Roddy, and I'm with Goulston and Storrs,
10 representing the property owner.

11 CHAIR JORDAN: Yes, and next we have?

12 MR. OTTEN: Excuse me, Chair. My name
13 is Chris Otten. I am the co-convener of Adams
14 Morgan for Reasonable Development.

15 CHAIR JORDAN: All right, thank you.
16 We have before us on this matter two motions. One
17 is -- well, two motions to dismiss. One's a motion
18 to dismiss of untimeliness. The other is before
19 us on an issue of substantive law, basically taken
20 as a summary kind of judgment to kind of move
21 forward with this, to dismiss this matter as I guess
22 basic argument of law, that the requirement, as set

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1 forth by the -- what the Applicant has alleged, is
2 not correct.

3 So I'm going to first -- I want to first
4 handle these motions. The motion for untimeliness
5 is the argument that this is outside of the 60-day
6 window to file an appeal, that the argument is that
7 the Applicant knew or should have known that the
8 permit was approved on July 21st, 2014. That's
9 correct? Isn't that what the motion simply says?

10 MS. RODDY: Correct, that as of July
11 14th, Zoning had signed off on the permit.

12 CHAIR JORDAN: Right, and there's
13 supporting documentation that based upon some
14 emails from Mr. Otten and others, and a shot of the
15 DCRA system, the PIVS system, that that exactly was
16 correct. It actually was -- I think it was
17 approved on the 14th of July, if I'm not mistaken.
18 Ms. Otten, what is your response to that?

19 MR. OTTEN: Thank you, Chair. This
20 permit was approved by DCRA, which is what we're
21 appealing on July 24th, 2014. As you --

22 CHAIR JORDAN: On July 24th, did you

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1 see that -- you're familiar with the July 14th
2 issue?

3 MR. OTTEN: I am not familiar with that
4 date. All I know is that we're appealing the
5 issuance of the building permit.

6 CHAIR JORDAN: Yeah, but I'm asking you
7 to deal with the motion to dismiss on timeliness.

8 MR. OTTEN: That's correct.

9 CHAIR JORDAN: Okay.

10 MR. OTTEN: We're appealing the
11 building permit issuance, which is what we're
12 allowed to appeal, and that was issued July 24th.
13 We were not made aware of that issuance until July
14 26th.

15 CHAIR JORDAN: And what are you -- what
16 on the building permit are you challenging? Are
17 you challenging the zoning issue on it or some other
18 aspect of the building permit?

19 MR. OTTEN: Several issues. But we're
20 appealing the issuance of the building permit.

21 CHAIR JORDAN: I'm asking -- okay.
22 But what --

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1 MR. OTTEN: We believe the building
2 permit was incorrectly issued.

3 CHAIR JORDAN: And what do you believe
4 was -- for the sake of what comes within the
5 jurisdiction of this Board, what do you believe was
6 improper in the issuing of the building permit?

7 MR. OTTEN: We believe that this
8 proposed construction contravenes zoning
9 regulations with regards to the rear yard and to
10 the rooftop structure.

11 CHAIR JORDAN: So your issue is a
12 zoning issue?

13 MR. OTTEN: That's why I'm here.

14 CHAIR JORDAN: And the zoning was
15 approved, the allegations that zoning was approved
16 July 14th, 2014?

17 MR. OTTEN: I don't know what was
18 approved July 14th, 2014. All I know is the
19 building permit --

20 CHAIR JORDAN: As you sit here -- let
21 me ask you. As you sit here today, you don't know
22 what was approved July 14th?

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1 MR. OTTEN: I know what the zoning regs
2 allow us to do as petitioners, and that is to appeal
3 the issuance of a building permit, not a subset of
4 DCRA's disciplines.

5 CHAIR JORDAN: Well, the decisions of
6 the Zoning Administrator at any shape, form or
7 fashion can be challenged. It can be either by --
8 we've had many, many cases here, and the cases are
9 law, that it's a decision, a definitive decision
10 by the Zoning Administrator, that being sometimes
11 in terms of an email, sometimes in terms of a
12 letter, and sometimes in regards to permits.

13 So the argument by the Appellee is that
14 the decision, the definitive decision by the Zoning
15 Administrator was made July 14th.

16 MR. OTTEN: I am unclear of that. All
17 I know is as petitioners, we are allowed to appeal
18 a building permit issuance. A building permit was
19 issued on July 24th. We were not made aware of that
20 until the 26th by certified mail from the
21 intervenor.

22 CHAIR JORDAN: Okay. So when you went

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1 -- it's alleged by your documentation that you went
2 out and looked on the website, on or about July 24th
3 or so; is that correct?

4 MR. OTTEN: No.

5 CHAIR JORDAN: You did not?

6 MR. OTTEN: On July 24th, we actually
7 sent an email to Matthew LeGrant, who's the Zoning
8 Administrator, as well as some of the folks in DCRA.
9 That's in the intervenor's exhibits. We were
10 asking if the building permit had been issued yet.
11 So that's in their exhibits. But the bottom line
12 is we were not --

13 CHAIR JORDAN: But my question was did
14 you -- did you make reference in your email on the
15 24th that said you had been looking at the system?

16 MR. OTTEN: No. I think we were asking
17 about the fact that construction had started before
18 the issuance of the building permit.

19 CHAIR JORDAN: Okay.

20 MR. OTTEN: And that we were asking for
21 a stop work order to be issued. At that point, we
22 didn't receive any information from anybody at

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1 DCRA, saying hey, the building permit has been
2 issued today. We got that information two days
3 later by mail on the 26th, and we submitted that
4 with our initial application for this appeal.

5 CHAIR JORDAN: Okay. Ms. Roddy, do
6 you want to respond please?

7 MS. RODDY: Chairman Jordan, I would
8 like to draw your attention to the email from Mr.
9 Otten dated July 24th. It states in the fourth
10 paragraph, quote "We have checked the PIVS web page
11 at the DCRA website for information, and we see that
12 the building permit has not been issued."

13 And I continue "It is still under review
14 by some DCRA disciplines." I think it's without
15 doubt that they checked the PIVS website to see
16 which disciplines had signed off on the building
17 permit. As you noted, the appeal period does not
18 run from issuance of the building permit. It runs
19 from issuance of the determination.

20 That determination was made July 14th,
21 and we have evidence in this email that he knew
22 about it on July 24th, and that makes his appeal

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1 untimely.

2 MR. OTTEN: Can I respond to that?
3 That's the exact email I'm talking about. That
4 email points out that we are writing to DCRA on July
5 24th --

6 CHAIR JORDAN: Excuse me one second.

7 MR. OTTEN: Oh sorry.

8 CHAIR JORDAN: All right. Go ahead
9 please.

10 MR. OTTEN: Okay. That email -- I'm
11 glad that you bought that, Ms. Roddy. That email
12 clearly shows that we're writing to DCRA on July
13 24th, trying to determine if the building permit
14 has been issued. According to that email and our
15 review of the PIVS website that day, the building
16 permit had not been issued.

17 However, nobody responded from DCRA
18 saying this day we are issuing the permit. We got
19 that notice. We had knowledge of the notice of
20 issuance of that permit two days later. We're
21 appealing the permit issuance, not a Zoning
22 Administrator decision. We cannot do that by the

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1 zoning regs. We have to appeal according to an
2 issuance of the building permit. That's in the
3 zoning regs.

4 CHAIR JORDAN: Okay. I won't argue
5 that point with you. But I think I've set forth
6 what the law is, and I understand your argument.
7 So I'm clear, your argument is that you physically
8 or actually did not make notice that the decision
9 that was made.

10 But the standard is knew or should have
11 known. That's the standard that's before this
12 Board. So the question before the Board is for
13 the Board to determine did you know or should you
14 have known that a decision, a definitive decision
15 was made by the Zoning Administrator on July 14th,
16 2014.

17 MR. OTTEN: So to that issue --

18 CHAIR JORDAN: No, I'm not asking -- I
19 haven't asked that.

20 MR. OTTEN: No information on the site
21 was providing what the Zoning Administrator did or
22 did not do. What we have --

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1 CHAIR JORDAN: Let me stop you for a
2 second, Mr. Otten. I'm just putting forth what the
3 issue is for the Board. I wasn't asking for any
4 response back to that, because I've given you --
5 both sides the opportunity to talk about --

6 CHAIR JORDAN: We never got a letter
7 from the Zoning Administrator saying that he
8 approved this. We can only -- as the public, as
9 the public is aware, can appeal a building permit
10 issuance. We cannot appeal otherwise.

11 CHAIR JORDAN: Okay, thank you. Now
12 the other issue raised on the motion to dismiss was
13 more on the substantive issue of what's been
14 alleged by the applicant regarding the rooftop
15 structures and rear yard structures, and that
16 motion to dismiss basically says that the law --
17 that these things as a matter of law are within the
18 zoning regulations; is that correct? Would you
19 like to make the argument for me please?

20 MS. RODDY: Thank you. I'd also just
21 like to clarify that we would include the rooftop
22 structures within our motion to dismiss based on

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1 timeliness. That was not raised until two weeks
2 ago. That's 159 days after the issuance of the
3 building permit.

4 And we can get into this, but there was
5 an argument made that he did not have the requisite
6 information at the time he filed the appeal to make
7 the argument regarding the rooftop structures, and
8 that is absolutely not true.

9 First of all, permit plans are
10 available to the public for review. I provided a
11 full permit set on September 19th for his review
12 and --

13 CHAIR JORDAN: Say that again?

14 MS. RODDY: I provided a full permit
15 set to him on September 19th for his review. And
16 finally I would just say that he included the
17 rooftop structures in his appeal to the Office of
18 Administrative Hearings. The Office of
19 Administrative Hearings considered it, denied it.
20 So he absolutely had that information prior to
21 December 30th.

22 So we would include that in the

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1 timeliness dismissal. Based on the substantive
2 with the rear yard, Section 2502.3 permits
3 structures less than four feet in the rear yard.
4 There's nothing greater than four feet within the
5 rear yard. So as a matter of law, there's nothing
6 here to contest.

7 CHAIR JORDAN: Mr. Otten, would you
8 want to respond to the issue of -- and what do you
9 have to show that the structure that your
10 allegations in the rear yard is above four feet,
11 four feet above grade?

12 MR. OTTEN: So we're going to get into
13 the merits of that argument now?

14 CHAIR JORDAN: I'm asking you what do
15 you have to offset that?

16 MR. OTTEN: We have lots of exhibits
17 that we're willing to show today. We're prepared
18 to show that. There are several structures in the
19 rear yard. Besides the garage ramp, there's also
20 a garage vent in the southeast corner of the rear
21 yard which we're prepared to show as well, and we
22 have that in our exhibits.

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1 And that stands at 15 feet above grade,
2 and we have DCRA's own submission, Exhibit D,
3 showing a structure above the ramp retaining walls
4 -- I shouldn't say retaining walls. The ramp has
5 three walls, and sitting on these walls is a
6 platform that will have a generator and associated
7 diesel gas tanks standing at eight, at least eight
8 feet above grade as well.

9 We could get into a lot more detail.
10 We're prepared to do that.

11 CHAIR JORDAN: I need you to do that.
12 Go ahead, proceed. Proceed.

13 MR. OTTEN: I mean that's -- there's at
14 least two structures in the rear yard.

15 CHAIR JORDAN: Well go ahead. Show it
16 to us please.

17 MR. OTTEN: You want me to show you that
18 on the exhibits?

19 CHAIR JORDAN: I want you to -- I'm
20 asking you to put on the proof that you have, that
21 there are structures in the rear yard area that are
22 in violation of 2503, and what was the other aspect

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1 of what you raised? That's what I'm asking, okay.

2 MR. OTTEN: Okay. I can do that right
3 now.

4 MS. RODDY: Thank you.

5 (Pause.)

6 MR. OTTEN: Submitting into the record
7 rear yard exhibits. They're labeled RYE-1 through
8 I believe 4, and what you'll see here are plats from
9 the DCRA file of the design plans. RYE-1 shows the
10 first floor plan mechanical, with the ramp going
11 down into and occupying more than half the rear
12 yard, which opposes some of the definition of rear
13 yard or yard in the Zoning Code.

14 And then on RYE-2, it's a blowup of that
15 rear yard, where you'll see in the southeast
16 corner, along the rear property line, a garage
17 exhaust 15 feet above grade as well. RYE-3 shows
18 -- this photograph was taken on January 9th, as a
19 test. That's my photograph from the surrounding
20 property.

21 What you'll see here is this ramp
22 leading down into the subterranean garage, with

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1 walls around it and a platform piece above it that
2 extends -- we believe will extend higher than eight
3 feet above grade, with the materials on top of it,
4 and that's shown in RYE-4 as well.

5 (Pause.)

6 MR. OTTEN: That's it for the rear
7 yard. Those are the two main structures there, and
8 we believe that between the height to them as well
9 as the occupation of the yard itself in terms of
10 percentages, that it contravenes the basic zoning
11 codes surrounding rear yard structures, as well as
12 the definition of yard.

13 CHAIR JORDAN: Is there anything else
14 you want to present to the Board?

15 MR. OTTEN: Did you ask about the
16 rooftop structures?

17 CHAIR JORDAN: Yes, go ahead.

18 MR. OTTEN: You want me to submit -- I
19 have those as well.

20 (Pause.)

21 MR. OTTEN: While we appreciate the
22 DCRA submission, it has helped clarify some of the

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1 rooftop issues, it's still very clear by the plats
2 on the DCRA file that we're looking at rooftop
3 structures that extend up at different vertical
4 heights. We're looking at rooftop structures that
5 extend to the edge of the building.

6 CHAIR JORDAN: Under what provision
7 are you challenging that the rooftop structure --
8 what part of the regulations are you challenging?

9 MR. OTTEN: 11-411.3, .5 and .6.

10 CHAIR JORDAN: 411.3, .5, .6?

11 MR. OTTEN: Yes.

12 CHAIR JORDAN: I thought your
13 pleadings challenged 770. I thought that's what
14 it was. Am I right or wrong? No, that's --

15 MR. OTTEN: I got you, I got you.

16 CHAIR JORDAN: All right, uh-huh.

17 MR. OTTEN: That refers back to 411.

18 CHAIR JORDAN: And it recites back to
19 770; correct?

20 MR. OTTEN: Right, yeah, seven.
21 That's the commercial district.

22 CHAIR JORDAN: And is there an

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1 exception for a C2B zone regarding those
2 regulations?

3 MR. OTTEN: Yeah. That's where DCRA
4 did clarify, and that had to do with 411.8, with
5 the number of stories. There isn't a limit on
6 number of stories, so we do concede that that was
7 corrected by DCRA.

8 However, it is unequivocal that we're
9 looking at a building with rooftop structures that
10 are at unequal heights, that extend to the edge of
11 the building, and that do not have a roof enclosing
12 mechanicals and the penthouse structures included
13 that are up there.

14 We also have, in RTE-9, the last page
15 of that exhibit, a photograph from a few days ago
16 of the rooftop, which appears different than the
17 plans that they've submitted to DCRA, which also
18 calls into question how many structures there are
19 up on the roof, separate and above what's allowed
20 by the zoning regs.

21 CHAIR JORDAN: So there's -- you're
22 saying R-9 has other than mechanical equipment on

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1 the roof?

2 MR. OTTEN: Yeah. The R-9 shows -- if
3 you look at the comparison -- sorry, I just put that
4 away -- looking at RTE-9, and then turn back to
5 RTE-5, you'll see the revised roof plan put on the
6 record by the intervenor on RTE-5. It kind of
7 comes through you. It's an opening there at the
8 end of this U on the rooftop. Do you see this?
9 This is RTE-5.

10 CHAIR JORDAN: Okay.

11 MR. OTTEN: So they have this. The
12 rooftop structure's apparently enclosed in these
13 walls, in a wall system now that goes around in a
14 U, and this end is open. However, the picture we
15 took on Friday, that opening is a lot smaller than
16 how they depicted it, and now there's actually a
17 structure in the middle of where that opening was
18 supposed to be.

19 CHAIR JORDAN: What's the structure?
20 What is that?

21 MR. OTTEN: This box, this first box in
22 the middle.

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1 CHAIR JORDAN: What is that? Do we
2 know?

3 MR. OTTEN: I was hoping to get to
4 examination.

5 CHAIR JORDAN: Mechanical equipment?

6 MR. OTTEN: It is unclear. If it's --
7 it looks like the other stairwell structures. But
8 that was where -- I mean part of what we wanted to
9 get at today was a lot of -- to ask questions, to
10 get a lot of information that has so far been not
11 transparently delivered.

12 CHAIR JORDAN: So you filed this appeal
13 on the decision of the Zoning Administrator, so you
14 can get more information, not that you're claiming
15 error in this regard to this allegation?

16 MR. OTTEN: We're saying just the prima
17 facie evidence of both the plans and the
18 photographs that we've taken show that this project
19 is contravening the D.C. zoning regs. The
20 issuance of the building permit was made in error
21 that allows this to happen.

22 CHAIR JORDAN: But you just said that

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1 you didn't have enough information to conclude what
2 you just said. Is that what -- am I confusing you
3 or you confusing me?

4 MR. OTTEN: I don't -- I mean --

5 CHAIR JORDAN: I thought you just said
6 that one of the bases that you were doing this
7 because you needed additional information to
8 understand. I asked you directly what was that
9 structure that you pointed to?

10 MR. OTTEN: You're asking me. I don't
11 necessarily know. I need to ask them what that
12 structure is. It looks like a separate structure.
13 There's multiple structures up there.

14 CHAIR JORDAN: And I think you also
15 made the statement that you wanted the basis of this
16 so you can get additional information, because you
17 don't know what's there, and that's the purpose of
18 this. Is that correct? I mean --

19 MR. OTTEN: One of the things that we
20 were going to submit with our presentation today,
21 our conclusion was to, after we get the information
22 from the intervenor and Appellee, to determine a

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1 post-hearing submission that would summarize all
2 the information we get vis-a-vis the zoning codes.

3 CHAIR JORDAN: So when you filed the
4 application, you were not certain of what these
5 things were. Is that what I'm understanding
6 you're saying?

7 MR. OTTEN: When we filed the
8 application, we looked at the prima facie evidence
9 that was on the BZA record in 18506, which we were
10 granted party status in. That went back to the
11 Court of Appeals, and was remanded back to this
12 agency. That was rooftop structures.

13 We've been in the dark about the rooftop
14 structures since. Other than after the issuance
15 of the building permit, finally we have an
16 understanding. In the OAH hearing, we have an
17 understanding of how they concluded that these
18 multiple rooftop structures are somehow one
19 structure.

20 We've gotten that -- that came about in
21 October. So now we're here today to show you guys
22 that there are multiple rooftop structures here.

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1 They're at multiple heights that seems to
2 contravene directly the zoning codes, that we want
3 to ask questions to understand how the Zoning
4 Administrator decided this, and how the building
5 permit was issued based on what seems to be direct
6 contradictions to the zoning regs.

7 CHAIR JORDAN: Does anybody have any
8 questions of the Appellant?

9 (No response.)

10 CHAIR JORDAN: Well, I'll kind of
11 reverse this. As I've contended to the Zoning
12 Commission, the real party in interest in these are
13 not necessarily the government. The real party in
14 interest is actually the applicant, and I don't
15 know if we're going to deal with that in the zoning
16 rewrite. So I'm going to turn now, if that's okay
17 with you, Mr. Thomas, to let Ms. Roddy, any
18 cross-examination questions you want to ask.

19 MS. RODDY: So we'll do a
20 cross-examination, rather than just a direct
21 rebuttal to his --

22 CHAIR JORDAN: I'm doing this the way

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1 I want to get it done.

2 MS. RODDY: Okay, sure.

3 CHAIR JORDAN: So I'm just trying to
4 get it all wrapped up. Please stay with me. Go
5 ahead.

6 MS. RODDY: Sure, no problem. Mr.
7 Otten, let's start with the rear yard. Can you
8 tell me the date of the plans that you were
9 referring to?

10 MR. OTTEN: Can you refer to an exhibit
11 for me?

12 MS. RODDY: When you referred to the
13 louver, let's say Exhibit 2 that you just handed
14 out.

15 MR. OTTEN: This was in the plans.
16 It's stamped, I believe July 24th, 2014. That's
17 what that stamp is there, on the bottom right.

18 MS. RODDY: I'm sorry. Which plan are
19 you reviewing?

20 MR. OTTEN: On RYE-1, Exhibit RYE-1,
21 down where it says M-1.2 to the plat number.

22 MS. RODDY: Right, and tell me where

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1 you see the July 24th?

2 MR. OTTEN: The stamp here was put on
3 all the pages, and I believe it says July 24th. You
4 can't really readily see it.

5 MS. RODDY: I believe that the date's
6 2013.

7 MR. OTTEN: I don't know.

8 MS. RODDY: Are you aware that that
9 louver is no longer included on the permanent set
10 of drawings that you referred to?

11 MR. OTTEN: I'm not. Can you show
12 that? Can you show that to us.

13 CHAIR JORDAN: Ms. Roddy, let me ask
14 you. So the document which is -- which will be
15 exhibit number -- or not an exhibit. It's not even
16 -- what is this, RT --

17 MS. RODDY: RYE-1.

18 CHAIR JORDAN: RYE-1. Oh, that's what
19 that means huh, is the plans from -- is the plans
20 from what date?

21 MS. RODDY: It's June 23rd, 2014. I
22 apologize on my number, my date.

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1 CHAIR JORDAN: 2014?

2 MS. RODDY: 2014.

3 CHAIR JORDAN: Okay, all right. Go
4 ahead, Mr. Otten, please stay in the chair. She's
5 asking questions of you please.

6 MS. RODDY: So just to confirm, you are
7 not aware that that louver no longer is in that
8 location?

9 MR. OTTEN: None of the files that I've
10 seen, that you've given me, show that.

11 MS. RODDY: Can you point out what the
12 rear yard is?

13 MR. OTTEN: It's the 15 foot space
14 between the rear lot line and the principle
15 building.

16 MS. RODDY: And can you point out the
17 transformer that you referred to?

18 CHAIR JORDAN: In the rear yard, what
19 is alleged to be in the rear yard?

20 MS. RODDY: What is alleged to be in the
21 rear yard. I'm sorry, the generator.

22 CHAIR JORDAN: Yeah, okay.

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1 MR. OTTEN: Do you have an exhibit for
2 me to point to?

3 MS. RODDY: Do you have -- you know
4 what? We'll use our exhibit.

5 CHAIR JORDAN: No. Let's do this.
6 Mr. Otten, what exhibit did you use to say that
7 there's a generator in the rear yard?

8 MR. OTTEN: We can use DCRA's Exhibit
9 D.

10 CHAIR JORDAN: Thank you.

11 MR. OTTEN: DCRA's Exhibit D.

12 CHAIR JORDAN: Okay. But I thought
13 you pointed out something to us in your exhibit,
14 rear yard exhibits? This is kind of hard to see
15 because it's tiny, but you can -- there is on the
16 RYE-1, the ramp going down that's in the rear yard,
17 the rear yard extends the length of the lot along
18 the southern lot line. That's the definition of
19 rear yard.

20 MS. RODDY: I'm asking the generator.
21 Can you please tell me where the generator is
22 located?

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1 CHAIR JORDAN: She asked you about the
2 generator.

3 MR. OTTEN: You asked me where the rear
4 yard was.

5 CHAIR JORDAN: No. She asked you
6 where the generator was, what you're alleging is
7 in the rear yard.

8 MR. OTTEN: Okay, regardless. I'm
9 point that out. The generator is if you follow the
10 car on the right that's going down into the ramp,
11 it will actually proceed underneath this platform
12 with diesel gas generator above it, and that's the
13 pictures I took as well.

14 CHAIR JORDAN: Is that the rear yard?

15 MR. OTTEN: That's in the rear yard.

16 CHAIR JORDAN: You're contending
17 that's the rear yard? I don't know if that's your
18 question.

19 MR. OTTEN: I'm contending a portion of
20 that is in the rear yard, yes.

21 CHAIR JORDAN: Ms. Roddy, I'm sorry.
22 I'll let you handle it.

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1 MS. RODDY: So you're testifying that
2 the generator is located within 15 feet of the rear
3 lot line? And we can refer to -- as you had
4 recommended, we can refer to DCRA's exhibit. It
5 has the yellow line that depicts the rear yard.

6 MR. OTTEN: What I'm contending is the
7 platform by which this generator sits exists across
8 the extent of the ramp structure, and therefore
9 it's in the rear yard, because the ramp is in the
10 rear yard.

11 MS. RODDY: How tall is the platform?

12 MR. OTTEN: All I know is what DCRA's
13 website, I mean Exhibit D says, that this will stand
14 8'6, eight foot six inches above grade total.

15 MS. RODDY: Do you see the same
16 notation that says 42 inch high platform?

17 MR. OTTEN: I do, yes.

18 MS. RODDY: Thank you.

19 MR. OTTEN: And the generator itself
20 will be standing above that; correct?

21 MS. RODDY: Yes. Oh, I'm sorry. I
22 won't get into it.

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1 CHAIR JORDAN: Would you ask the
2 questions and answer the questions? I'm not going
3 to allow you to banter back and forth. She's
4 asking questions, if you would.

5 MR. OTTEN: I mean I could -- I mean I'm
6 supposed to be making the presentation today.

7 CHAIR JORDAN: Mr. Otten, I've been
8 very respectful for you, and I'm going to request
9 that you be respectful to the Chair or to this
10 Board.

11 MR. OTTEN: We haven't even started the
12 case yet.

13 CHAIR JORDAN: Mr. Otten.

14 MR. OTTEN: Have we started the case
15 yet?

16 CHAIR JORDAN: I gave you the
17 opportunity to present to the Board that which you
18 wanted to say. I'm now giving Ms. Roddy the
19 opportunity to cross-examine the statements that
20 you made. So that's where we are.

21 MR. OTTEN: This is an unfair process.
22 I'm supposed to be making a presentation and then

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1 they're supposed to cross-examine me on that. I
2 don't think this is how it's supposed to unfold.

3 CHAIR JORDAN: Okay. I'm sorry you
4 don't think that. Now Ms. Roddy, do you have any
5 more questions?

6 MS. RODDY: I just wanted to confirm
7 that the platform is less than four feet tall;
8 correct?

9 MR. OTTEN: I don't know.

10 CHAIR JORDAN: What platform are you
11 referring to?

12 MS. RODDY: The one that we just
13 discussed, that's 42 inches high?

14 MR. OTTEN: The one that extends across
15 the ramp structure?

16 MS. RODDY: Correct.

17 ZC CHAIR HOOD: Mr. Chairman, let me
18 just interrupt. I think this is very fair process.
19 I agree with the leadership in how you're handling
20 this. I think the issues are being fleshed out
21 here. So for the record, I want to put that in the
22 transcript also. I think this is very fair

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1 process. So let's continue. Thank you.

2 CHAIR JORDAN: So would you respond to
3 Ms. Roddy's question please?

4 MR. OTTEN: I'm just confused. Are we
5 a party to this case right now? We're going right
6 into cross-examination and I don't get to present.
7 This is supposed to be an appeal process, where if
8 I am deemed a party, then I get to present and then
9 they get to cross-examine --

10 CHAIR JORDAN: We're actually
11 discussing the substance of the motions to dismiss,
12 based upon what has been submitted by the
13 Respondents in regards to this. I'm not going to
14 say the grouping, because it's not necessarily
15 Appellee's situation, and based upon what your
16 statement is, to try to justify what she said.

17 You've made alleged factual
18 statements, and now I'm asking questions, having
19 the other side to ask you questions in regards to
20 that. Now if we get to a point we can get past this
21 motion to dismiss, then you will be allowed to make
22 a presentation, if we can get past that point. But

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1 we're dealing with these motions to dismiss.

2 MR. OTTEN: I see.

3 CHAIR JORDAN: And it's not a one-way
4 situation where you're allowed to say what you want
5 to say, and not be able to be asked questions. So
6 out of fairness, which you keep trying to push,
7 we're being fair to the opposition also. So that's
8 where we are. So I hope you're clear about where
9 we are in this process.

10 MR. OTTEN: I'm trying to understand
11 it. Thank you.

12 CHAIR JORDAN: Okay, thank you. So
13 the question that was asked by Ms. Roddy -- I'm
14 sorry.

15 (Pause.)

16 CHAIR JORDAN: So would you repeat your
17 question, your very direct question to Mr. Otten
18 please?

19 MS. RODDY: Is the platform that is in
20 the rear yard less than four feet tall?

21 MR. OTTEN: The platform that extends
22 cross the ramp structure, as shown in RYE-4, along

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1 iron beams it looks like, in this picture is taller
2 than four feet. It's above the ground more than
3 four feet.

4 MS. RODDY: And what are you using as
5 your basis for the measurement of height in what
6 you're looking at?

7 CHAIR JORDAN: Excuse me, Ms. Roddy.
8 Let me ask a question. How tall is it above the
9 ground?

10 MR. OTTEN: I am not sure, but it's
11 more -- looks like more than four feet to me.

12 CHAIR JORDAN: Did you measure it?

13 MR. OTTEN: No. Again, I would just
14 point to Exhibit D of DCRA.

15 CHAIR JORDAN: I'm going to ask a
16 question. And do you have a document that says
17 what the height is?

18 MR. OTTEN: Yeah. DCRA's Exhibit D
19 says that this platform and generator, with
20 associated diesel tanks, will be standing at eight
21 feet, six inches above grade.

22 MS. RODDY: Well, let's look at that

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1 comment that you're reviewing. It says that --
2 would you mind just reading it to me? It's a five
3 foot generator. That's where I'm looking.

4 MR. OTTEN: Yes.

5 MS. RODDY: And what comes after that?

6 MR. OTTEN: On a 42 inch high platform.

7 MS. RODDY: Thank you.

8 MR. OTTEN: Right.

9 MS. RODDY: Now --

10 MR. OTTEN: But you asked me about
11 whether or not that platform was in the rear yard.

12 MS. RODDY: I'm going to ask another
13 question.

14 CHAIR JORDAN: Okay please.

15 MR. OTTEN: And I think it is.

16 MS. RODDY: Now you would contend that
17 the garage and the garage ramp are illegally in the
18 rear yard; is that correct?

19 MR. OTTEN: Yes. They occupy more
20 than 50 percent of the yard.

21 MS. RODDY: Can you tell me what the
22 definition of a yard is?

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1 MR. OTTEN: Yes.

2 MS. RODDY: I have an excerpt here, if
3 you'd like to use that.

4 MR. OTTEN: I have my own. Thank you.

5 (Pause.)

6 MR. OTTEN: "Yard, an exterior space
7 other than a court on the same lot with the building
8 or other structure. A yard required by the
9 provisions of this title shall be open to the sky
10 from the ground up, and shall not be occupied by
11 any building or structure, except as specifically
12 provided in this title. No building or structure
13 shall occupy in excess of 50 percent of a yard
14 required by this title."

15 MS. RODDY: So the definition of a yard
16 says that it should be open to the sky from the
17 ground up. Are you aware that the garage is a below
18 grade garage?

19 MR. OTTEN: The garage is a
20 subterranean garage, with a ramp that has walls on
21 three sides of it going down into that garage.

22 MS. RODDY: And is the ramp at grade?

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1 MR. OTTEN: The ramp walls are not at
2 grade.

3 MS. RODDY: And how tall are the garage
4 ramp -- the walls that you refer to?

5 MR. OTTEN: They are -- this ramp,
6 which occupies more than 50 percent of this yard,
7 has walls that go up 42 inches according to the
8 plans.

9 MS. RODDY: And is that less than four
10 feet?

11 MR. OTTEN: It is.

12 MS. RODDY: Thank you.

13 CHAIR JORDAN: Okay, all right. Did
14 you want to deals with roofs? You can cross on the
15 rooftop please.

16 MS. RODDY: Sure, thank you. Now --

17 MR. OTTEN: Excuse me. Chair, can I
18 clarify the process here? It's their motion to
19 dismiss. When do I get to cross-examine them on
20 this motion?

21 CHAIR JORDAN: What we're doing, you
22 made the presentation. I asked you to provide your

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1 defense of the motion. They're asking questions
2 of the motion. They have not presented any other
3 evidence regarding their motion, other than what
4 we're doing, what appears to be obvious to me.

5 So the burden now -- I believe their
6 submission, from what -- I'm giving you the
7 opportunity to rebut what they have said, so that
8 you have in fairness the opportunity to challenge
9 that which they have said.

10 MR. OTTEN: I can't ask questions of
11 what they've said in the motion?

12 CHAIR JORDAN: No, we're not at that
13 point. No.

14 MR. OTTEN: When do I get to ask
15 questions? They're saying that --

16 CHAIR JORDAN: They've made a
17 definitive statement in their motion.

18 MR. OTTEN: When do I get to ask
19 questions of that statement?

20 CHAIR JORDAN: You don't get a chance
21 to answer. They've made a definitive motion.
22 They have not presented anything other than that

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1 which they already submitted. I asked you what in
2 your submission -- I was very clear about what was
3 in their submission, what was your thoughts on it?
4 Where are they wrong?

5 You then brought these documents and
6 said this supports your basis for going forward.
7 That's what you said; is that correct? So that's
8 where we are. So your next question was -- did you
9 ask a question?

10 MS. RODDY: I did not, but I will.

11 CHAIR JORDAN: Okay. We're on --

12 MR. OTTEN: I would like a legal
13 explanation of the process.

14 CHAIR JORDAN: It's a decision of the
15 Chair, and you don't have a right to ask --

16 MR. OTTEN: I would like to
17 cross-examine. This is their motion.

18 (Simultaneous speaking.)

19 CHAIR JORDAN: Excuse me a second.

20 MR. OTTEN: They're presenting their
21 motion. I should be able to cross-examine them on
22 this motion now. I would like a legal --

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1 CHAIR JORDAN: You have the legal
2 opinion. No. This is the Board of Zoning
3 Adjustment, which I chair.

4 MR. OTTEN: The BZA is --

5 CHAIR JORDAN: You don't have
6 authority to ask or the right to ask.

7 (Simultaneous speaking.)

8 CHAIR JORDAN: I am the chair. I am
9 the chair, and I don't choose to ask for anything
10 further than going forward with this hearing.

11 MR. OTTEN: Well then this is unfair to
12 tell us as a party.

13 CHAIR JORDAN: I'll tell you what.
14 I'm sorry you feel that way. Ms. Roddy, do you have
15 a question?

16 MS. RODDY: Yes.

17 MR. OTTEN: I'm putting that on the
18 record.

19 MS. RODDY: Yes. With respect to the
20 roof structures, it's your contention that there's
21 more than one roof structure; is that correct?

22 CHAIR JORDAN: Mr. Otten, Ms. Roddy

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1 asked you a question.

2 MR. OTTEN: I don't know if I want to
3 participate in this unfair process.

4 CHAIR JORDAN: Okay.

5 MR. OTTEN: It is clear the exhibits
6 show more than -- multiple rooftop structures at
7 various heights, and we'll get into that if we get
8 into this appeal.

9 CHAIR JORDAN: Let me do this for the
10 sake of the record. There are two motions pending.
11 One was a motion to dismiss based upon timeliness.
12 The other was pending based on the substantive of
13 the issue moving forward.

14 The motion to dismiss, we're having a
15 hearing. We discussed the motion to dismiss. We
16 understood clearly what the movement has said in
17 regards to their motion. In order to give Mr.
18 Otten or the Appellant the opportunity to rebut
19 those allegations contained in the motion to
20 dismiss.

21 We asked Mr. Otten to prepare and to
22 submit to this Board anything in opposition to the

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1 motion. During that time, Mr. Otten presented
2 factual basis by submitting documents and exhibits
3 of what he contends was in opposition to the motion.

4 Because he then put evidence into play,
5 we gave the opponent the opportunity to ask
6 questions regarding the factual evidence that Mr.
7 Otten has placed before this Board, in defense of
8 the motion to dismiss. So I just want that for the
9 record.

10 Mr. Otten has now decided that he did
11 not want to participate in that level of
12 discussion, because he believed it was not fair and
13 that he should have the right to cross-examine the
14 movant in regards to their motion. The movant has
15 not placed any other evidence before this Board,
16 other than what they have placed in their motion
17 submitted to this Board. That's where we are.

18 So we're now on the issue of discussing
19 the rooftop structure, the motion to dismiss on the
20 rooftop structure.

21 MS. RODDY: Thank you. Let's refer to
22 Exhibit E in the DCRA submission. Do you see a

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1 trellis on the rooftop structures?

2 MR. OTTEN: A trellis not a roof.

3 MS. RODDY: I'm sorry. Do you see the
4 trellis on the rooftop structures?

5 MR. OTTEN: If a trellis is there, it
6 is not a roof, which is what is required by the
7 zoning regs.

8 MS. RODDY: Does the trellis connect
9 each of the rooftop structures?

10 MR. OTTEN: A trellis is not a roof.

11 MS. RODDY: Does the trellis connect
12 the structure?

13 MR. OTTEN: I'm not sure. All I know
14 is a trellis is not a roof, which is what the zoning
15 regs require.

16 MS. RODDY: Are you aware of the
17 precedent set in the *Lester* case, as well as the
18 *JPI* case?

19 MR. OTTEN: No.

20 MS. RODDY: In that, we won't get into
21 that. We'll save that. But can you tell me the
22 height of the trellis?

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1 MR. OTTEN: A trellis not a roof.

2 MS. RODDY: Can you tell me the height
3 of the trellis?

4 MR. OTTEN: No, I cannot.

5 MS. RODDY: Can we refer to your
6 rooftop exhibit?

7 MR. OTTEN: Yes.

8 MS. RODDY: On RTE-3, can you confirm
9 that the trellis extends over each stairway, as
10 well as the elevator overlay?

11 MR. OTTEN: So RTE-3 is this image
12 here?

13 CHAIR JORDAN: Would you use the hand
14 mic please? Thank you.

15 MR. OTTEN: Thank you Secretary for the
16 mic. So this is RTE-3, a true and correct copy from
17 DCRA's files, dated June 23rd, 2014, and then
18 stamped July 24th, 2014.

19 CHAIR JORDAN: Well let me -- what was
20 the question again?

21 MS. RODDY: I wanted to confirm that
22 the trellis connected above each of the stairwells,

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1 as well as the elevator penthouse?

2 MR. OTTEN: So what I'm seeing is a
3 trellis that connects the stairwell structures,
4 which has a wall that extends to the edge of the
5 building this way, and continue around in a
6 U-shaped to each of the stairwell structures here,
7 and connecting again all of these walls that go to
8 the edge of the building, and then keep this open
9 here.

10 So not all the mechanical structures on
11 the roof are enclosed. It's just this U shape
12 right here.

13 MS. RODDY: Thank you. Now let's
14 refer to RTE-6.

15 MR. OTTEN: Okay.

16 MS. RODDY: And can you tell me the
17 height of the trellis?

18 MR. OTTEN: It looks to be 14 feet, six
19 inches.

20 MS. RODDY: Now are there any other
21 structures that protrude above that height?

22 MR. OTTEN: Of the height of the

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1 trellis, which is not a roof? Well, the separate
2 structure of the elevator overrun is the same
3 height as the trellis.

4 MS. RODDY: Thank you, and are you
5 aware of Section 411.17 of the zoning regulations?

6 MR. OTTEN: Yes.

7 MS. RODDY: And what does that section
8 say?

9 MR. OTTEN: It has to do with the floor
10 area ratio of the rooftop structures.

11 MS. RODDY: .17?

12 MR. OTTEN: .17? No, I'm not aware of
13 that.

14 MS. RODDY: Do you know how tall the
15 mechanical equipment that you pointed out is?

16 MR. OTTEN: The mechanical equipment
17 that's within the --

18 MS. RODDY: I'm sorry, the HVAC?

19 MR. OTTEN: The not entirely enclosed
20 mechanical equipment area. I think these are less
21 than four feet tall.

22 MS. RODDY: Thank you.

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1 MR. OTTEN: I'm not sure about what the
2 platform height is.

3 MS. RODDY: Can you tell me what the FAR
4 of the enclosed rooftop structure is?

5 MR. OTTEN: That's part of what's at
6 play here. So we have the enclosing walls now
7 connecting the stairwells, as well as the enclosing
8 walls that go to the edge of the building?

9 MS. RODDY: I'm just asking a
10 straightforward question. Do you know what the
11 FAR of the roof structure is?

12 MR. OTTEN: I do not.

13 MS. RODDY: Thank you.

14 CHAIR JORDAN: DCRA, any questions?

15 MR. TONDRO: Yes, thank you. Mr.
16 Otten, can I refer to your Exhibit RTE-9?

17 MR. OTTEN: Yes.

18 MR. TONDRO: Does that look like it is
19 a finished structure?

20 MR. OTTEN: Does that look like it's a
21 finished structure?

22 MR. TONDRO: Does the construction

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1 appear to have been finished and completed? Is
2 that the final appearance of the construction?

3 MR. OTTEN: That looks to be several
4 rooftop structures, one included right in the smack
5 middle that's not on these plans. This structure
6 right here, right in the middle (gesturing).

7 MR. TONDRO: What I would like -- what
8 I'm seeking to ask is whether or not that photo
9 represents what will be the final product, or is
10 this something that is still being built and
11 therefore other things may be added to it?

12 MR. OTTEN: Good question. All I can
13 go with is the plans that were approved for this
14 construction by DCRA.

15 MR. TONDRO: And those are the plans
16 that you are appealing I believe, yes?

17 MR. OTTEN: There is no structure right
18 here. But yet in the picture there is. So I don't
19 know if that means that it's going to be torn down
20 to meet the plans that were actually approved by
21 DCRA or not. But that structure that's in the
22 middle of this picture, in the foreground of the

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1 rooftop structures, is not in the DCRA plans that
2 were approved.

3 MR. TONDRO: Could you show me what
4 exactly you mean by that? What viewpoint or can
5 you relate to me -- show me on the plans where
6 exactly you took that picture from?

7 MR. OTTEN: Okay.

8 MR. TONDRO: And then if you can show
9 me where there is not -- where it should be located
10 on the plans, if it's not there?

11 MR. OTTEN: I see. So I took this
12 photograph from the roof of the building by where
13 our participating members live, two of them at
14 least, which is approximately 10-15 feet southeast
15 of this property.

16 So looking this way, this shot is
17 looking this way. The pointed corner of this
18 exhibit is this pointed corner right here.

19 MR. TONDRO: And if you were to draw a
20 straight line down, does that not intersect with
21 the penthouse for the elevator and the stairwell?

22 MR. OTTEN: For almost the entire

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1 length of the building, this is where the elevator
2 and stairwell here is. I don't believe I could get
3 that in this shot. That's too far down.

4 MR. TONDRO: You don't believe?

5 MR. OTTEN: Yeah, because what I'm
6 seeing --

7 CHAIR JORDAN: Wait a minute. We're
8 not going to have the banter back and forth. Ask
9 the question again very directly, and Mr. Otten,
10 would you please respond to the question directly.
11 Go ahead, please. You ask the question, yes.

12 MR. TONDRO: Thank you, sir. From the
13 vantage point of the photo, looking from where
14 you've indicated it was taken from that corner,
15 that on the plan is on the upper left-hand corner,
16 and a straight line down, there is a gap between
17 the -- on the plan. Let's say on the photograph,
18 there is a gap in the structures.

19 Does that not correspond with what you
20 would see on the plan if you start from the upper
21 left-hand corner and go down diagonally toward the
22 lower right-hand corner, in which case --

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1 MR. OTTEN: Okay. Let me respond to
2 that. What I'm seeing in RTE-9, our exhibit, are
3 -- it's hard to hold this up at the same time.
4 Basically looking at the left side of the
5 photograph, this structure right here we're
6 presuming is this stairhouse structure on this
7 plat.

8 The structure all the way to the right
9 is going to be this stairwell structure right here.
10 There's a structure that we're pointing out in the
11 middle, that as far as we can tell, there's no
12 stairwell structure here on this plat. It's all
13 mechanical here.

14 Further, we are presupposing that this
15 iron -- this is an iron beam that extends up above
16 the stairwell structures. That's the elevator
17 override. That's further down in the building
18 here. That's the taller structure.

19 MR. TONDRO: And Mr. Otten, just to
20 clarify, these are your observations or
21 presuppositions, based on construction that has
22 not been completed, not based on what has been filed

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1 and been approved, which is the subject of your
2 appeal?

3 CHAIR JORDAN: What was that question
4 again?

5 MR. TONDRO: I just wanted to confirm
6 that your observations are based on construction
7 that has not been completed, not based on what was
8 actually filed with the building permit, which is
9 what you are appealing; is that correct?

10 MR. OTTEN: Yes. We're trying to
11 appeal this before the construction is completed,
12 because we don't want this building to be built in
13 contrapositive to the Zoning Codes. This
14 structure here doesn't appear on this plat that's
15 in the foreground. I don't know if it's temporary
16 or not. Maybe you would know. I don't know.
17 We're also concerned --

18 CHAIR JORDAN: So in essence, Mr.
19 Otten, the question that is being presented, and
20 I'm trying to be a little bit more direct with it,
21 is that the building is still under construction.
22 There are items that you have placed in the picture

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1 that are maybe not there permanently, but that
2 these things can change. So that's the question.

3 The final building, what you see now;
4 those things could change. Is that what your
5 question is?

6 MR. TONDRO: Yes. Thank you, sir.

7 MR. OTTEN: And we want them to change
8 so they meet the zoning regs.

9 CHAIR JORDAN: No, no, no. Would you
10 answer my question? I'm trying to -- so those
11 things could change is what his question is. What
12 you see now in the picture, you recognize that the
13 building is not complete. What you see there could
14 be temporary, could be permanent. But they could
15 change; correct?

16 MR. OTTEN: They would have to reflect
17 this, or I hope they change, and I hope they reflect
18 the zoning regs.

19 CHAIR JORDAN: So the basis of your
20 argument and the appeal is that what you -- what
21 you're observing right now do not meet what you see
22 in the plans. Is that what you're saying?

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1 MR. OTTEN: Right. The plan evidence
2 here does not meet the Zoning Code, where
3 mechanical equipment should be fully enclosed, as
4 well as the penthouses, that they should be at equal
5 heights and rise vertically through a roof. We're
6 not seeing that. We're also seeing walls
7 extending out from the structure to the edge of the
8 building, which one for one setback we know should
9 not happen.

10 CHAIR JORDAN: All right. Is there
11 any other questions?

12 (No response.)

13 CHAIR JORDAN: Then I'm going to turn
14 to -- Ms. Roddy, I want you to go ahead and to
15 summarize your motion to dismiss.

16 MS. RODDY: Thank you. As we've
17 stated and as we've briefed, we believe that this
18 appeal should be dismissed as untimely. That
19 would be our first basis for appeal. Section
20 3112.2 states that any person --

21 CHAIR JORDAN: We're good on that one.
22 Go to the second one.

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1 MS. RODDY: Thank you, and I just would
2 like to reiterate that the same argument that we
3 would apply to the roof structures, is that is
4 most definitely untimely at this point. We would
5 further then state that this should be dismissed
6 on a substantive basis, because there's no evidence
7 in the record that there are any structures above
8 four feet in the required rear yard.

9 As the Zoning Code allows in Section
10 2503.2, structures less than four feet in height
11 are permitted under the zoning regulations within
12 the rear yard. With respect to the rooftop
13 structures -- well, let me actually go into a little
14 bit more detail.

15 The louver that he had referenced is not
16 located in the rear yard. The generator that he
17 referenced is not located in the rear yard. The
18 platform that he referenced, as well as the walls
19 that surround the garage entry, are located within
20 the rear yard, and are less than four feet in
21 height. His testimony today confirmed that.

22 We would also submit that this appeal

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1 should be dismissed on the substance of the roof
2 structures. We'd first state that this was
3 actually bought to the Office of Administrative
4 Hearings, this precise question, and the Office of
5 Administrative Hearings also confirmed that there
6 was a single rooftop structure.

7 He confirms that the trellis connects
8 the structures. The precedent set forth by this
9 Board in the *JPI* and more recently in the *Lester*
10 cases, confirms that a trellis can be a unifying
11 structure and roof, if it is more than 51 percent
12 enclosed, as it is in this instance.

13 Mr. Otten testified that the trellis is
14 at 14 foot 6 inches, and that is a uniform height.
15 He confirmed that the condensers on the roof are
16 less than four feet in height, which is permitted
17 by 411.17.

18 Mr. Otten testified that he was not
19 aware of what the FAR was of the roof structure,
20 therefore obviating any need to discuss 411.6, I
21 believe, because there's no evidence in the record
22 to suggest that it exceeds the .37 FAR that is

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1 permitted by the zoning regulations, and it in fact
2 is nowhere near the .37 that is permitted by the
3 zoning regulations.

4 So I think the evidence that he
5 submitted today confirms that there's a single
6 structure. It is of uniform height and it does not
7 -- there's no evidence to suggest it exceeds .37.

8 CHAIR JORDAN: All right. Mr. Otten,
9 your response to that, to the motion to dismiss
10 based upon the structure in the rear yard and the
11 rooftop structure?

12 MR. OTTEN: Thank you. In response,
13 this motion is not based on evidence in the record.
14 It does not flow from evidence in the record that
15 would allow this appeal, and if this case would move
16 forward, we would be able to really explain and show
17 how, as we have already, the rear yard exhibits show
18 that the platform by which extends across the ramp
19 structure is holding up equipment that's going to
20 stand eight feet above grade.

21 That equipment is a diesel gas
22 generator holding gas in tanks, which according to

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1 the definitions, excuse me, to the zoning regs, a
2 structure is anything constructed, the use of which
3 requires permanent location on the ground, or
4 anything attached to something having permanent
5 location on the ground.

6 This is that platform that extends into
7 the rear yard, that crosses across the ramp. The
8 platform has on top of it a tank and gas holders
9 as part of the generator, and stands at eight feet
10 above grade. So that is a structure in the rear
11 yard.

12 With regard to the garage vent that
13 stands 15 feet above grade, according to the plans
14 that we were given, we have not seen evidence
15 showing that that has been moved and relocated to
16 somewhere else, and the intervenor has not shown
17 this Commission that to be true.

18 Further, we are arguing that the ramp
19 structure itself, with the associated platform on
20 it and the generator on top, exists in the yard and
21 occupies 50 percent of that yard, which is against
22 the definition of the yard.

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1 That is affirmed by the D.C. Office of
2 Planning report from the BZA case 18506, which
3 states that the majority of the rear yard is
4 occupied by this ramp structure. Regarding the
5 rooftop structures, it is clear by the exhibits
6 that we have placed on the record today, that there
7 are at least two heights to this rooftop structure,
8 as seen in RTE-1 and 2, that there is no roof
9 extending over the mechanicals. The mechanicals
10 are not fully enclosed on the roof, either with a
11 roof above them or with louvers above them.

12 That contravenes directly 411.3, which
13 says all penthouses and mechanical equipment shall
14 be placed in one enclosure. The enclosing walls
15 from the roof level shall be of equal height and
16 raised vertically to a roof. On top of that, we
17 know we have six foot high privacy walls that extend
18 from this rooftop structure to the edge of the
19 building. We know there should be a setback from
20 the edge of the building of one to one ratio. That
21 also is not the case here.

22 So there are several issues with the

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1 rooftop structures, which we would be glad to get
2 into in a full appeal presentation. Therefore, we
3 believe the motion to dismiss, based on the facts
4 of the structures in both the rear yard and the
5 rooftop, should be not granted.

6 CHAIR JORDAN: Does DCRA have anything
7 additionally they want to add to the motion?

8 MR. TONDRO: Yes, thank you. Mr.
9 Chairman, members of the Board, I would like to just
10 point out that under Subsection 411.14, that
11 provision states, provides for curtain walls that
12 are going to be without a roof, that are going to
13 give the appearance of a unified structure. So I
14 present that as an alternative, that there does not
15 have to be always an enclosure with a roof over it.
16 Thank you.

17 CHAIR JORDAN: Let me ask just one
18 other question, Mr. Otten. The plans, is your
19 argument that the plans that you got from DCRA, and
20 what the Applicant is now doing is not the same?
21 Is that what you're saying?

22 MR. OTTEN: That's one issue, that

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1 we've -- in terms of just visible observation of
2 the rooftop structures.

3 CHAIR JORDAN: So, but I'm asking the
4 plans that DCRA had, what's wrong with those plans,
5 that violate the zoning regulations?

6 MR. OTTEN: That violate the zoning
7 regs?

8 CHAIR JORDAN: The plans, yes.

9 MR. OTTEN: Well, in terms of rooftop
10 structures?

11 CHAIR JORDAN: Just start with that,
12 the rooftop structure.

13 MR. OTTEN: First of all, the
14 mechanicals are not enclosed within the so-called
15 curtain walls that we've heard today.

16 CHAIR JORDAN: On the plans they're not
17 showing that?

18 MR. OTTEN: Right. So partially --
19 sorry.

20 CHAIR JORDAN: And you're including
21 the trellis? Those things that are connected by
22 the trellis, you're saying --

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1 MR. OTTEN: Yes. So this trellis goes
2 around in a U. Some of the mechanicals extend
3 beyond this enclosed U. Further, the walls that
4 -- the curtain walls that extend between the
5 stairwell structures also extend out to the edge
6 of the building.

7 According to these plans, they're at
8 least six feet high, which is greater than four
9 feet, which makes them part of this structure as
10 well. That juxtaposed to the zoning regs does not
11 comport, both the mechanicals not being entirely
12 enclosed and there's the lack of the one for one
13 setback on the rooftop structure as a whole.

14 CHAIR JORDAN: Okay. Is there
15 anything else DCRA?

16 MR. TONDRO: No thank you.

17 CHAIR JORDAN: Okay. Excuse us. For
18 the sake of consolidating time, and so that we can
19 proceed on, let me do it this way. I'm going to
20 hold a ruling on the motions at this particular
21 point. Mr. Otten, let me go to the substance of
22 your appeal. Is there anything else you can

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1 present, you want to present to the Board on the
2 substance of your appeal?

3 MR. OTTEN: On the substance of my
4 appeal?

5 CHAIR JORDAN: Yes.

6 MR. OTTEN: Okay. So you've seen -- I
7 just handed this to cliff. I'll make sure that the
8 lawyers --

9 CHAIR JORDAN: What is it and what are
10 you talking about?

11 MR. OTTEN: I mean essentially the
12 conclusion of the appeal, the two claims of the
13 rooftop --

14 CHAIR JORDAN: Which document are you
15 talking about?

16 MR. OTTEN: It's dated January 13th.
17 At the top it says "Appeal Claims, Part 1 and 2."

18 CHAIR JORDAN: Okay.

19 MR. OTTEN: Okay. So that's -- I want
20 to make sure that was in on the record, and also
21 we have the --

22 CHAIR JORDAN: Okay, all right. So

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1 what are we passing out? What is this? Okay,
2 okay.

3 MR. OTTEN: Okay. Besides the actual
4 factual evidence, I wanted to make sure that the
5 Board knew what Zoning Code I was working off of
6 for the appeal, to represent Adams Morgan for
7 Reasonable Development. I just submitted that,
8 and then --

9 CHAIR JORDAN: Okay. We accept that
10 in the record.

11 MR. OTTEN: Thank you, and then the
12 exhibits just in regards to our standing.

13 CHAIR JORDAN: And Mr. Moy, what we
14 need to do is catch up on those exhibit numbers.
15 But go ahead. All right. What else did you submit
16 to us?

17 MR. OTTEN: And just the exhibits
18 regarding standing, and with regards to our members
19 who live from where I took that picture.

20 CHAIR JORDAN: I don't think standing
21 was an issue before the Board. But go ahead. What
22 else do you have, you're going to present to us on

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1 substantive?

2 MR. OTTEN: And we presented in our
3 initial Exhibit 2 was the timeliness issue, which
4 shows that we were delivered the issuance of the
5 building permit on July 26th, to show that we did
6 appeal within the 60 days after having knowledge
7 of that issuance of the building permit.

8 CHAIR JORDAN: Is there anything else
9 you want to present to the Board supporting your
10 appeal?

11 MR. OTTEN: So this -- yeah. I think
12 you have everything. I could give these plat
13 exhibits in as well.

14 CHAIR JORDAN: But they're the same
15 things that you submitted, actually that we reduced
16 in 8-1/2 by 11. Would that be correct?

17 MR. OTTEN: Chair, there's actually
18 two plats on here that are not -- that I didn't
19 reduce these two. This is the sheet titled A-136,
20 Penthouse Finished Plan dated June 23rd, 2014.

21 CHAIR JORDAN: So it would be the
22 Applicant's architectural plans, Exhibit 13 what

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1 is it?

2 MR. OTTEN: A-136.

3 CHAIR JORDAN: Okay.

4 MR. OTTEN: That's the sheet title,
5 Penthouse Finished Plan, again showing the
6 interconnected structure here that has an opening
7 with the mechanicals falling out. And then just
8 some of the roof elevations, and that's A-303,
9 which shows the trellis, the privacy walls that
10 stand at six feet coming off this structure, off
11 the curtain walls. That I did not reduce. This
12 last one --

13 CHAIR JORDAN: But that's -- we have
14 those in the record. You can --

15 (Simultaneous speaking.)

16 MR. OTTEN: Okay. I'd like to add that
17 as well.

18 CHAIR JORDAN: Okay.

19 MR. OTTEN: That's it.

20 CHAIR JORDAN: Good. All right, thank
21 you. Let me turn to the opposition, both the lack
22 of -- because he's not really an intervenor.

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1 You're a party as a matter of right. Outside of
2 what you presented on the motion to dismiss, do you
3 believe that you need to present something else to
4 the Board, to offset the substantive complaint of
5 the Appellant?

6 We already went through a series of
7 documentations. Is there anything else?

8 MS. RODDY: No. Thank you.

9 CHAIR JORDAN: DCRA?

10 MR. TONDRO: No. Thank you.

11 CHAIR JORDAN: All right. Then we
12 will close this record. Based upon what's been
13 deduced on the motion to dismiss and including the
14 additional substantive submission by the
15 Appellant. I'm going to ask that all parties
16 present a findings of fact and conclusions of law
17 to the Board. We're going to set this for
18 decision, Mr. Moy.

19 MR. MOY: I'm sorry. Just a second
20 Mr. Chairman.

21 CHAIR JORDAN: Oh, that's okay. I
22 ain't got nothing else to do.

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1 MR. MOY: I'm being buried in paper
2 work. I know you didn't want to hear that.

3 CHAIR JORDAN: He's buried in paper
4 work.

5 (Pause.)

6 CHAIR JORDAN: Mr. Moy, I need you.

7 MR. MOY: Yes, yes, yes. Okay, okay,
8 here I am. Here we go. Okay. Today is January
9 the 13th. Give time for draft orders, let's say
10 two weeks to write draft orders.

11 CHAIR JORDAN: No, no, no. Give me a
12 decision date.

13 MR. MOY: Okay. February the --
14 February the 10th.

15 CHAIR JORDAN: February 10th?

16 MR. MOY: Let's go February 10th.

17 CHAIR JORDAN: February 10th is when we
18 have the hearing?

19 MR. MOY: February 10th, yes we do.

20 (Simultaneous speaking.)

21 CHAIR JORDAN: Okay. Finding of
22 facts, conclusions of law submitted by February

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1 3rd, okay, and that's going to resolve this matter.
2 Thank you very much. Thank you very much. I
3 appreciate it. Let's call 18898 please.

4 Application 18898

5 MR. MOY: All right. To the witness
6 table --

7 CHAIR JORDAN: All right. We're going
8 to take three minutes.

9 MR. MOY: Yes sir. That would be
10 Application No. 18898 of Ingleside Presbyterian
11 Retirement Community. I'm not going to read the
12 multiple requests for relief, but I'll leave that
13 up to the Applicant if there's any amendment to
14 that.

15 CHAIR JORDAN: Very good, there we go.
16 Please introduce yourselves.

17 MS. PRINCE: Allison Prince with
18 Goulston and Storrs here on behalf of the
19 Applicant, Ingleside at Rock Creek.

20 CHAIR JORDAN: Uh-huh.

21 MS. PRINCE: Would you like me to
22 introduce my whole panel?

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1 CHAIR JORDAN: Well, they can
2 introduce themselves. I don't know if we're going
3 to need a panel, but go ahead.

4 MR. STEINER: Harry Steiner, Perkins
5 Eastman Architects on behalf of Ingleside.

6 MS. O'CONNOR: Lynn O'Connor,
7 president and CEO.

8 MR. VAN PELT: Dave Van Pelt with Grove
9 Slate Associates (phonetic).

10 CHAIR JORDAN: The last name again?

11 MR. VAN PELT: Van Pelt.

12 CHAIR JORDAN: Okay.

13 MR. SPECK: And I'm Randy Speck, Chair
14 of ANC-3G.

15 CHAIR JORDAN: Very good. Okay.
16 We've kind of called this up before, and I hope
17 you've had the opportunity to one, take care of the
18 other preliminary matter of how you're going to
19 make -- what the ANC's concerns were and make that
20 into an agreement. Mr. Speck, you guys, you're
21 comfortable with that?

22 MR. SPECK: Yes, Mr. Chair.

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1 CHAIR JORDAN: And I just wanted to
2 give you time, because this is a matter which I
3 think that it speaks for itself in regards to the
4 relief being requested. I think there's --
5 certainly I want to congratulate and commend the
6 neighborhood and community for all working
7 together and trying to get this thing worked out.

8 It's something that it's so important
9 for this Board that people live together as best
10 as they can, and sometimes it's discussion. A lot
11 of times there's not discussions. But there's
12 been so much discussion here, and I really
13 appreciate that, and a very comprehensive
14 agreement in regards to this.

15 A couple of things. I don't really
16 have any issue or questions regarding the
17 application. I think I understand what's going
18 on. I see the issues. I think OP's supportive and
19 the ANC is supportive in regards to the -- in light
20 of the conditions, which are now an agreement.
21 Board, is there any questions you need to get
22 drilled down in regards to this project?

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1 (No response.)

2 CHAIR JORDAN: Let me go over what some
3 of the conditions that I actually pulled out, and
4 if there is some opposition that comes up, Ms.
5 Prince we can deal with that in regards to rebuttal.
6 I would suggest that to be the process.

7 But I pulled out for conditions that we
8 would incorporate in our document, and that would
9 be your number one, that they -- "Ingleside shall
10 designate a project manager as a single point of
11 contact, who will be responsible for receiving and
12 addressing revolving -- involving and resolving
13 any complaints and concerns that might arise out
14 of this relief.

15 "Ingleside project manager shall keep
16 a log of any outstanding questions and issues, and
17 respond back to the ANC." Your Condition No. 1,
18 Communications, I think it's C. "Ingleside shall
19 prepare and provide to the task force for comment
20 its plan for trees, shrubs and vegetation." That
21 provision, keep that in place, that we will put in
22 our order.

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1 Your Section No. 2 under design, your
2 paragraph E and F regarding the "Ingleside shall
3 not place any permanent structures, facilities or
4 structures in the ravine area," as you already
5 have there.

6 2-F, we'll keep that provision. Then
7 your Section No. 4, Temporary Facility, and I don't
8 know if these are your numbers or my numbers,
9 because the computer might have done something
10 crazy. The first one, the one that says that 5314
11 - 29th Street, N.W. is to be temporary housing. No
12 more than ten current assisted living residents
13 until construction of the new assisted living
14 facility is complete, whatever that sub is. My
15 machine went a little crazy.

16 Then your 4-F, "Within 30 days after the
17 issuance of a certificate of occupancy, the
18 necessary licensing for the building contain the
19 permanent assisted living facility. The
20 temporary facility should be terminated."

21 And G, that during -- then your 4-G.
22 "During the period when Ingleside uses a temporary

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1 facility, there should be no more than ten assisted
2 living residents. Staff shall consist of two
3 persons during the day and the evening shift, up
4 to two persons during the night." "No Ingleside
5 employee shall park on the street."

6 That whole provision that you had there
7 was at 4-G, at 4-G, okay? Those I would
8 incorporate that affect zoning directly, into any
9 order if we do that. As I said, I don't know if
10 the Board has any questions about the application
11 or anything that you think you need to -- yes, yes,
12 Ms. Allen.

13 VICE CHAIR ALLEN: I really just want
14 to make a comment. I really did appreciate the
15 plan itself and certainly the parking provisions
16 that you made in this plan, which we really actually
17 have you people increase the parking. I just
18 wanted to say I appreciate that.

19 CHAIR JORDAN: So Ms. Prince, is there
20 anything that you wanted to present to the Board,
21 or can we proceed on and you can handle anything
22 in rebuttal if necessary?

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1 MS. PRINCE: I'd like to do whatever
2 you'd like me to do. I'm prepared to make a
3 statement. We have a full presentation of the
4 architecture. We have the director here.

5 CHAIR JORDAN: We're good, uh-huh. So
6 then let's turn to Mr. Gyor.

7 MR. GYOR: Good afternoon Mr.
8 Chairman, members of the Board. Stephen Gyor with
9 the Office of Planning. We support the project and
10 rest on the record. Thank you.

11 CHAIR JORDAN: Good. Any questions,
12 Board, of Mr. Gyor?

13 (No response.)

14 CHAIR JORDAN: The Applicant, any
15 questions?

16 MS. PRINCE: No questions for Mr. Gyor.

17 CHAIR JORDAN: Where's my DDOT note?
18 What did I do with my DDOT note? I can't find my
19 DDOT. Anyone here from Department of
20 Transportation on this matter?

21 (No response.)

22 CHAIR JORDAN: Where's my note on DDOT?

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1 What did DDOT do with this? Okay. Department of
2 Transportation has no objection to the requested
3 relief. I don't know how I drove past that. I
4 guess I got caught up on all the conditions. All
5 right.

6 (Pause.)

7 CHAIR JORDAN: That's what I get for
8 doing these things so far in advance, right? I've
9 got to go back and read my notes sometimes. All
10 right. Mr. Speck, do you want to add anything else
11 into the record for the ANC?

12 MR. SPECK: I'd just reiterate, Mr.
13 Chairman, the effort that went into producing these
14 -- this agreement that we have with Ingleside.
15 It's the product of literally hundreds of hours of
16 community people meeting together with Ingleside.

17 I think this could be a model, really,
18 for how a developer and the community could work
19 together, to resolve a lot of very, very difficult
20 problems that initially concerned the community
21 very greatly, and there was, I think, a groundswell
22 in the community that they didn't want this

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1 project.

2 But after a great deal of effort and a
3 willingness to compromise on both sides, we were
4 able to reach an agreement and I'm actually quite
5 proud of this agreement that we've reached.

6 CHAIR JORDAN: Very good. Thank you,
7 and again, I thank you for the effort. Board, any
8 questions of ANC?

9 (No response.)

10 CHAIR JORDAN: Okay. Ms. Prince, any
11 questions?

12 MS. PRINCE: No questions.

13 CHAIR JORDAN: Is there anyone here
14 wishing to speak in support of the application?
15 Anyone wishing to speak in support? Yes, please.

16 MS. PRINCE: May I note that the
17 supporters who happen to be residents of Ingleside
18 were not sworn in. If you'd like to swear them in.

19 CHAIR JORDAN: Oh, they weren't?
20 Okay. Mr. Moy. If you're going to -- let me --
21 if you have not been sworn, please stand and get
22 sworn, anyone. If you haven't been sworn. Please

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1 Mr. Moy.

2 [WITNESSES SWORN.]

3 MR. MOY: Thank you.

4 CHAIR JORDAN: Thank you. Come in and
5 take a seat. Are you -- you're going to present
6 a statement too? Please take a seat here please,
7 and let's make sure that those microphones are
8 turned on. You'll get a bright, glowing green
9 light. So yeah. Push the button. I think you
10 have to push it. Yeah, there we go. Okay.
11 Please identify yourselves.

12 MS. ANGUS: Jayne Angus, a resident of
13 Ingleside.

14 MS. HARRIS: Ruth Harris, resident of
15 Ingleside.

16 MS. AGLER: I'm Ellen Agler, the
17 executive director of Temple Sinai, representing
18 Temple Sinai.

19 CHAIR JORDAN: Okay. So each one of
20 you have three minutes if you would like to address
21 the Board and tell us what's on your mind. Ms.
22 Agnes is it? Agnes?

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1 MS. ANGUS: Angus.

2 CHAIR JORDAN: Angus? Please,
3 uh-huh.

4 MS. ANGUS: Like the black cow.

5 CHAIR JORDAN: I gotcha. Go ahead,
6 uh-huh.

7 MS. ANGUS: I just would like to say my
8 husband and I have lived at Ingleside for over 14
9 years, and we are kind of overstayed our actuarial
10 welcome, because we're still in good health and
11 active. My husband is currently president of the
12 residents association, and I am a regular member
13 of the board of directors.

14 We as a community of residents care very
15 much for the whole community, and always have. So
16 we were very much involved in the process of
17 communicating back and forth with other residents.

18 We have a serious concern to replace two
19 of our older buildings that are not providing our
20 assisted living residents and skilled nursing
21 residents the quality of life that the rest of us
22 have. They need to be upgraded considerably.

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1 We have currently 127 units of
2 independent living which are full, and 199 people
3 or couples on the waiting list, which we're part
4 of the problem, because we're clogging the
5 pipeline. But we have a wonderful community, and
6 we want the community to stay a small enough size
7 that we can all still now each other and care for
8 each other.

9 This is important. We from the outset
10 told the administration that we did not want to go,
11 to take full advantage of market conditions. The
12 conditions are strong. We wanted only what we
13 needed to provide for our more helpless residents,
14 and to increase enough of our independent living,
15 to bring us into balance for a sound financial
16 future.

17 This is what we have worked through over
18 the months, and this is what we're asking for.

19 CHAIR JORDAN: Very good. Thank you.
20 Next please.

21 MS. HARRIS: Thank you. I've been a
22 D.C. resident since 1965 and a little bit before

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1 that time I was in Maryland. When my husband and
2 I decided to leave our single family home, we were
3 really grateful to be able to find Ingleside, which
4 is right in the neighborhood where were living, and
5 it's been a very happy move for us.

6 As Ms. Angus said, we definitely need
7 to replace our health care center and our assisted
8 living center. They are very antiquated by
9 today's needs, and that's something that we're
10 concerned, because we don't know when we're going
11 to need them.

12 We have another concern, which is about
13 our own investment in the place. I think as I
14 understand, and I only read -- this is from my
15 reading, not from any expert position, we really
16 need to enlarge the financial base by building new
17 units.

18 Since there is a need and a baby boomer
19 group coming, we are pretty sure that those units
20 will be filled. But that will help us keep these
21 other facilities up to standard.

22 Then the other thing, it's nice to still

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1 be in my own community, where we can continue to
2 be in touch with the groups that we have known
3 earlier, and to keep our connections with the
4 Lafayette School and all the ANC, bless their
5 hearts.

6 We have a lot of coming and going in our
7 building of people who are coming on for their AA
8 meetings or their practice meetings for rehearsals
9 that they're doing for shows, that kind of thing,
10 and a lot of us going out into the community, where
11 we do participate in community efforts to do
12 tutoring, for instance, and that kind of thing.

13 So I feel like we're very much a part
14 of the community, and are grateful to be that way,
15 and I hope you will see fit to --

16 CHAIR JORDAN: Thank you. Appreciate
17 it. Thank you for coming.

18 MS. HARRIS: Approve this application.

19 CHAIR JORDAN: Thank you for coming.
20 Appreciate it. Next we have -- yes.

21 MS. AGLER: Hi. Ingleside is our
22 immediate neighbor, and we share a property line

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1 that spans the entire length of our campus. Our
2 institutions have enjoyed a positive relationship,
3 characterized by having good, responsive and open
4 communication.

5 We've also had a cordial relationship
6 with the ANC and have appreciated all of Randy
7 Speck's time and commitment to establish the
8 conditions for approval of Ingleside's BZA
9 application.

10 We were treated as a respected
11 stakeholder throughout the process, and appreciate
12 that our input was heard and responded to. We
13 support the programmatic improvements that
14 Ingleside is seeking to accomplish by their campus
15 redesign.

16 Our concerns relate to the impact that
17 years of construction will have on our temple
18 operations. The conditions for approval document
19 addresses these concerns, and we hope that the BZA
20 will require adherence to those terms as a part of
21 any approval.

22 There are five key areas of concern for

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1 Temple Sinai that I'll mention just briefly. The
2 first has to do with construction-related parking.
3 Parking for our temple members, guests, preschool
4 families is extremely limited, and we rely,
5 particularly during our nursery school drop off and
6 pickup times and other peak times, the ability to
7 access on street parking in the adjacent
8 neighborhood.

9 It's very important, as a part of
10 Ingleside's project, that an enforceable plan
11 results in having no construction-related parking
12 spilling over onto neighborhood streets.

13 Next, the traffic flow on Military
14 Road. Access to our main driveway on Military Road
15 is a daily necessity. The alternative entrance is
16 off of a narrow stretch of Jocelyn Street adjacent
17 to the Carnegie Institution. The need for
18 restrictions or temporary closures on Military
19 Road near our entrance should be minimized, and
20 advanced notification provided, so that we can plan
21 to mitigate potential problems with access to our
22 campus.

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1 Next, construction-related noise, dirt
2 and odors. We hope that every effort will be made
3 to erect construction barriers along our shared
4 property line, and to set up construction staging
5 in a way that minimizes disruption to the
6 experience of members, guests and children have as
7 they move about our campus, both outside and
8 inside.

9 Next, communication. Proactive
10 communication with Temple Sinai will be a key to
11 enduring the lengthy construction period in the
12 best way possible. Consistently receiving
13 advance notice about when work will be especially
14 noisy or disruptive will provide the opportunity
15 to address our schedule if necessary.

16 Finally, our high holy days. We are
17 seeking Ingleside's particular sensitivity to the
18 Jewish high holy days each fall. We notify them
19 well in advance of our service schedule each year,
20 and asked the District for relief from parking
21 restrictions during this time.

22 We hope that Ingleside will keep

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1 adjacent and surrounding streets accessible and
2 maintained to quorum during these holiest days of
3 the year.

4 In summary, Temple Sinai is
5 supportive of Ingleside's proposed programmatic
6 changes, and we support their application if, and
7 only if our concerns noted above are addressed
8 through the BZA's inclusion in a binding fashion
9 of the ANC-3G's carefully crafted conditions into
10 the BZA's order to approve the application. Thank
11 you for the opportunity to participate.

12 CHAIR JORDAN: All right, thank you.
13 Is there anyone else wishing to speak in support
14 of the application?

15 (No response.)

16 CHAIR JORDAN: Is there anyone wishing
17 to speak in opposition? All right. Please come
18 forward. I'm going to ask you three -- thank you
19 so much, if we can --

20 (Pause.)

21 CHAIR JORDAN: Please identify
22 yourselves.

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1 MR. CARLSON: I'm Richard Carlson.
2 I'm director of the Department of Terrestrial
3 Magnetism of the Carnegie Institution.

4 MR. COLLINS: Christopher Collins,
5 Holland and Knight, here on behalf of Carnegie.

6 MS. RENSHAW: Anne Renshaw, 40 year
7 resident adjacent to Ingleside's property.

8 CHAIR JORDAN: Okay. Whoever wants to
9 begin. Do you want to begin, Ms. Renshaw?

10 MS. RENSHAW: Mr. Carlson?

11 CHAIR JORDAN: Okay.

12 MR. CARLSON: I'd be happy to. I'd
13 like to give a little background on Carnegie. It's
14 a research non-profit institution incorporated by
15 an act of Congress.

16 CHAIR JORDAN: You might want to save
17 yourself some time. We're aware of what you've
18 already submitted. I just want to help you with
19 your three minutes so --

20 MR. CARLSON: Okay. Well, I should
21 get there.

22 CHAIR JORDAN: Okay.

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1 MR. CARLSON: I wanted to make the
2 point that our research, we have been on this campus
3 since 1914 in residence. We have two research
4 departments on this campus. We do research on
5 earth and planetary sciences, and I'd just like to
6 convey some of the types of work that we do.

7 One is that the chief scientist of the
8 MESSENGER spacecraft that's currently orbiting
9 Mercury is a member of our department. We do
10 research relevant to the prediction of earthquakes
11 and volcanic eruptions. We analyze mineral grains
12 from other stars that have implications for the
13 formation of the solar system, and our staff is
14 among the first to detect planets around other
15 stars.

16 So we range widely. We bring in last
17 year \$13.4 million in federal grant support, which
18 in part is of short duration grants, usually on the
19 order of two to five years, and obviously lack of
20 completion of this promised work would have dire
21 consequences for our future ability to receive such
22 funding.

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1 We have on order of 70 staff, who are
2 there for a long time, and then about 50
3 postdoctoral fellows who come for two year stints,
4 and there are 70 visiting scientists from pretty
5 much all around the world, that come for very short
6 research stints.

7 We share many of Temple Sinai's
8 concerns with the general issues about
9 construction, although we appreciate the efforts
10 that were put in the ANC effort to address these.

11 Our particular concern is that our
12 research is supported by a number of instruments
13 that are very sensitive to ground vibration. The
14 Ingleside construction is planned right along the
15 border of our property, much closer to our property
16 than any past structures on the Ingleside property.

17 So we've considered what the options
18 are if their activities would shut down the
19 operation of our instrumentation. To achieve
20 these kind of analyses by contract, buying at other
21 institutions that have similar equipment, we're
22 looking at charges on the order of \$900 an hour.

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1 If the vibrations are too high, it will
2 compromise service contracts that we maintain on
3 the instruments, that run on the order of \$400,000
4 a year. The vibration specs that we have for these
5 instruments are clear, well-documented. We have
6 documentation that our facility actually meets
7 these specifications.

8 They were presented to Ingleside in
9 October, and apparently of some concern, they only
10 appreciated the significance of these vibration
11 specifications in a meeting that we held yesterday.
12 So we're after here simply more time in order for
13 discussions with Ingleside, including some
14 measurements of the transmission of vibration from
15 Ingleside to our property, to see how big of a
16 problem this is really going to be. Thank you.

17 MR. COLLINS: Mr. Chair and members of
18 the Board, Ingleside is asking for a special
19 exception, and the requirement for a special
20 exception includes a showing that the relief will
21 not tend to adversely affect the use of neighboring
22 property.

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1 If this application is approved without
2 consideration of Carnegie's issues, it will have
3 an adverse impact on Carnegie. Among the
4 proposals is a building that is adjacent to
5 Carnegie's property line, that includes a four
6 level below grade parking garage.

7 There is a number of issues that
8 Carnegie has. They have boiled down two
9 construction-related issues. As Dr. Carlson
10 mentioned, Ingleside only focused on the severity
11 of these issues yesterday. Ingleside has admitted
12 that Carnegie's issues are legitimate, that
13 Ingleside has not paid sufficient attention to
14 those issues, and Ingleside has asked for the
15 record to be left open for six weeks, in order to
16 address those issues and to also set a further
17 hearing in case the parties cannot agree. But all
18 parties, we believe that we can reach agreement.

19 The Board has incorporated
20 construction management plans on other
21 institutional cases, to address adverse impacts
22 during construction, and I'll give you a couple of

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1 examples. *The Lab School*, Case No. 18663, January
2 of 2014; *The Field School*, Case No. 18431, December
3 2012.

4 The Zoning Commission, also using the
5 special exception provisions for universities, has
6 imposed a CMP most recently, among others, American
7 University in Case No. 11-07A of March of 2012. So
8 for these reasons, our position is that if you
9 approve this application, it will have an adverse
10 impact on the Carnegie.

11 It will be a short-term impact on the
12 Carnegie. We think that it will be
13 construction-related only, but we need six weeks
14 or Ingleside needs six weeks to perform vibration
15 monitoring on their property and our property,
16 because they only just focused on this yesterday.

17 We're simply asking for six weeks for
18 the record to be left open, to allow that to occur.
19 What we hope is that at the conclusion of that, we
20 can then convert our opposition to support. We
21 just don't know that at this point. Thank you.

22 CHAIR JORDAN: Thank you. Ms.

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1 Renshaw.

2 MS. RENSCHAW: Mr. Chairman and members
3 of the BZA, and guests and residents of Ingleside,
4 my name is Anne Renshaw. I'm a 40-year resident
5 and owner of 2910 Military Road, which abuts the
6 Ingleside retirement community.

7 I was chair of ANC-3G in 1996, when
8 Ingleside, then called the Presbyterian Home,
9 petitioned the BZA for a special exception to build
10 102 active senior apartment units. I did not
11 champion the expansion back then, fearing that the
12 home's appetite for growth would eventually
13 overwhelm the surrounding Military Road
14 neighborhoods. I have not been proven wrong.

15 As a veteran Ingleside abutter, I come
16 before the BZA on which I served some years ago,
17 to express reasonable opposition to its current
18 application for yet another, but far greater,
19 expansion. Grounds for this opposition are
20 sixfold and relate to the buildings and the land
21 only, not its residents.

22 First, what's the rush? On December

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1 1st, 2014, I appealed to the ANC to request a
2 postponement, citing project reports not yet
3 submitted to the ANC or BZA. That request was
4 denied. Four reports, we note, were only filed
5 with the BZA in the last two weeks.

6 Moreover, the Carnegie Institution has
7 requested on January 9th a modest delay, which
8 would allow time for the community to catch up with
9 the case filings and discuss the conclusions that
10 could either, in the DDOT report or OP report, that
11 could definitely be rebutted or clarified.

12 Second, I want to touch on the big
13 business of aging. Ingleside's application is
14 more about expanding, albeit non-profit business
15 and its bottom line. Private continuing care
16 communities, including Ingleside, compete for
17 residents via advertising and aggressive
18 marketing. To stay competitive, more and better
19 amenities must be part of the sales package.

20 Moreover, we note that the buildings
21 come next to house the additional senior
22 population, which according to OP desires support

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1 and amenities. More occupants require extra
2 staff, that may or may not use public
3 transportation to and from work.

4 However, OP maintained, some nine times
5 in its report, that the impact on the surrounding
6 neighborhoods should be minimal, or may not be or
7 should not be adverse. If Ingleside's huge
8 expansion goes forward, complete with a life care
9 center building extending down Military Road from
10 30th Street to 30th Place, the immediate
11 residential area will become even more identified
12 as an institutional zone than a series of appealing
13 neighborhoods nestled in Ingleside's shadow.

14 Third, the building height and the
15 Tunisian Ambassador's residence. In 1996, the
16 community killed the Holiday Inn high-rise design
17 floated by the home as its new Ingleside apartment
18 building. We note for the record that nearby
19 Forestside and St. John's College High School at
20 Military Road and 27th Street, N.W., are both
21 low-rise buildings in keeping with the residential
22 area.

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1 This time, Ingleside is proposing not
2 one but two eight-story buildings, far out of
3 character with neighboring private homes. I
4 requested a balloon test to prove or disprove the
5 actual sight lines of these high-rise buildings,
6 but that was summarily rejected.

7 Not to worry said Ingleside to the
8 community. We'll plant trees. The trees
9 Ingleside planted along the 29th Street alley to
10 hide the view of the senior apartments some 18 years
11 ago, however, have either died or are drawing their
12 last breath.

13 Moreover, one eight story high-rise
14 will loom over the front door of the official
15 residence of the Tunisian Ambassador, jeopardizing
16 his and his family's privacy. Moreover, during
17 this time of great international tension, the
18 Ambassador's security could be compromised, given
19 that an entrance to a new underground garage may
20 be located directly adjacent to the Ambassador's
21 residence.

22 Fourth, the environmentally sensitive

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1 ravine. A former Tunisian Ambassador wrote to the
2 BZA a letter back in 1996, stating his Embassy's
3 objections to Ingleside's expansion along the west
4 ravine, and I quote that in my testimony.

5 The protection of the east ravine,
6 which backs up to homes along the 2900 block of
7 Military Road --

8 CHAIR JORDAN: I'm going to ask you --
9 we're already now two minutes, almost 2 minutes and
10 30 minutes (sic) over, if you can probably use the
11 next 30 seconds to wrap up for us.

12 MS. RENSHAW: It's going to be a little
13 difficult, but I'll skedaddle through this.

14 CHAIR JORDAN: Thank you.

15 MS. RENSHAW: I just wanted to point
16 out in this objection paragraph, that what the
17 abutters want is permanent not incremental
18 protection against Ingleside's acquiring more
19 property, such as the 3000 block of Military Road
20 south side, all properties of which are now owned
21 by Ingleside, save one home, which it would like
22 to acquire.

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1 I talk about construction in the 30
2 months of six day a week demolition and pile driving
3 and earth moving. It will be 30 plus months during
4 which the quiet enjoyment of our homes will be lost
5 and never recouped. The residents will be awarded
6 by amenities. Outlier senior citizens may only
7 get a bed in which to recuperate after breaking a
8 hip.

9 We have multiple conditions from the
10 ANC, but I remember back in 1996 that there were
11 conditions that were promised that did not work
12 out. They rather fizzled. We feel that there
13 will be parking in the neighborhood. It's going
14 to happen.

15 Ultimately, the Broad Branch grassy
16 area across from a shared driveway of Ingleside and
17 the Tunisian Ambassador will become a prime
18 construction parking area, hopefully this time
19 with the approval of both public space and Rock
20 Creek Park.

21 Lastly and importantly, Military Road
22 and traffic. The conditions are terrible on

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1 Military Road, and the traffic is worse and worse.
2 It suffers from the absence of permanent traffic
3 enforcement, faulty traffic signals and uneven
4 sidewalks, which impact pedestrian safety.

5 And we have the prospect of more high
6 frequency buses traversing the roadway. We suffer
7 from vibrations and emissions from construction
8 and commercial vehicles which permeate the area.
9 But DDOT approved Ingleside's application in any
10 case, with only the caveat for Ingleside to provide
11 bicycle parking.

12 CHAIR JORDAN: I've --

13 MS. RENSHAW: Please, just I --

14 CHAIR JORDAN: I've already done that.
15 I've gone and I have to be fair to everyone.

16 MS. RENSHAW: All right. But I just
17 want to say please, in conclusion, that Ingleside
18 may meet its burden of proof, but we ask at what
19 expense. Regardless of having its acreage,
20 Ingleside should limit future high- and mid-rise
21 construction, so that the charm of surrounding
22 neighborhoods will not be devalued due to

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1 Ingleside's institutional ambitions. Thank you.

2 CHAIR JORDAN: Thank you. All right.

3 Does the Applicant have any questions they want to
4 ask any of the witnesses?

5 MS. PRINCE: I do not.

6 CHAIR JORDAN: All right, good. All
7 right. Then we will turn back to the Applicant.
8 Is there any rebuttal that you'd like to present
9 to the Board?

10 MS. PRINCE: No rebuttal. I just have
11 some remarks in closing.

12 CHAIR JORDAN: Yes. Go ahead, please.

13 MS. PRINCE: In this case, we would
14 like to rest on the record. We have a very, very
15 complete record that reflects literally over a year
16 of work with the community. We have signed off is
17 a Planning report, as well as a good report from
18 DDOT.

19 But there's one thing missing, and I
20 want to reiterate what Mr. Collins said, because
21 this is a matter of commitment that Ingleside has
22 made to Carnegie. We want to reiterate the

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1 importance of the record being left open for an
2 agreement with the Carnegie Institute.

3 We underestimated the magnitude of
4 their issue. We have committed to working on it.
5 We have hired the appropriate consultants to do
6 that, and we will work in incredibly good faith to
7 try to achieve an agreement. We've made that
8 commitment to Carnegie.

9 In the event that we are not able to
10 reach an agreement, we believe a further hearing
11 would be required to allow this new information
12 into the record and a full vetting of it.

13 That's of course your call. We believe
14 all the other issues have been addressed
15 exhaustively, but we did not want to leave this
16 Board with the impression that we feel we need to
17 honor the commitment that we made to Carnegie, to
18 continue to work on an agreement.

19 So we would ask that you consider that
20 in your -- as you think further about this case.
21 Other than that, we believe that the record is
22 complete.

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1 CHAIR JORDAN: Let me say this. When
2 cases get filed and they get on the docket and
3 they're moving at a certain pace, either we operate
4 on those cases. We push cases back. We sometimes
5 are not fair to others, because we have other things
6 pushing and going forward.

7 So it's for the applicants to know that
8 their cases are ready to go. It's also something
9 that's important, that the applicants do reach out
10 and talk to the community as soon as possible and
11 not the last minute, because people should have the
12 opportunity to weigh in.

13 MS. PRINCE: Uh-huh.

14 CHAIR JORDAN: So this is what I'm
15 going to suggest to the Board we're going to do in
16 this case at this time, because I've really got some
17 concerns about keeping this record open, doing all
18 this, when I'm hearing that this conversation,
19 there was an offer up by the Carnegie earlier on
20 to be part of the discussion.

21 It wasn't taken seriously until the
22 other day, which gives me great concerns. I know

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1 you were working with the ANC and others in the
2 community. I understand that, and I appreciate
3 that. But backing up the dockets because the
4 Applicant may not be ready to go, for something that
5 could have been taken care of a long time ago just
6 gives me some rub.

7 Mr. Moy, we're going to put this on for
8 a decision in eight weeks or 12 weeks, because we're
9 going to make it comfortable for the Board where
10 we're going to place this. Submission at least one
11 week before of any agreement that's worked out, and
12 if there's an issue that you think we may need to
13 take up.

14 But I'm not right now comfortable in
15 keeping this open for a hearing, because I don't
16 see the basis of it. So Mister --

17 ZC CHAIR HOOD: Mr. Chairman, I would
18 concur. When I first read that was line laid out
19 by Ms. Prince, and possibly in six-seven weeks we
20 might have to come back and have a limited scope
21 hearing. I think from what I'm hearing, I think
22 you all will come back working together so we won't

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1 have to have a scope hearing, because I'm not
2 favorable in having another hearing.

3 I'm going to operate on the merits and
4 what was discussed here. But I would also ask, Mr.
5 Chairman, that we also take into consideration,
6 include Ms. Renshaw, an Ingleside abutter, in some
7 of those conversations, and see how we can try to
8 mitigate some of those concerns from her and her
9 neighbors as well.

10 So I would concur. Ms. Prince, we're
11 not looking forward to another hearing. We're
12 looking forward to everyone coming in holding
13 hands, singing Kumbayah, and then that way we can
14 make an informed decision and we can move on. So
15 I associate myself with your comments, Mr.
16 Chairman.

17 CHAIR JORDAN: Thank you. Mr. Moy.

18 MR. MOY: For eight weeks, we're
19 looking at March the 10th, a Tuesday, for a
20 decision.

21 CHAIR JORDAN: Okay, all right. Then
22 we want information back no later than March 3rd.

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1 MS. PRINCE: Thank you.

2 CHAIR JORDAN: So we'll conclude this
3 hearing, and this on March -- what was the date
4 we're using for this?

5 MR. MOY: March 10th.

6 CHAIR JORDAN: March 10th. All right.
7 Thank you very much. Thank you all for coming.
8 Thank you for taking times out of your day and
9 sitting here, and see how much fun we have here on
10 Tuesday. As you know Ms. Renshaw, it can be -- this
11 one was not -- this wasn't a bad day at all, you
12 know. We can, you know, have some very interesting
13 things come here. Wow, a reality show.

14 Is there any other business that needs
15 to come before the Board at this time?

16 VICE CHAIR ALLEN: Yes.

17 CHAIR JORDAN: Ms. Allen.

18 VICE CHAIR ALLEN: I would like to move
19 in the course of business that for this upcoming
20 year, is that the time frame, the upcoming year,
21 I move that Lloyd Jordan be chair of the BZA. I'd
22 like to also move that Marnique Heath be the new

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1 vice chair of the BZA.

2 CHAIR JORDAN: Second?

3 ZC CHAIR HOOD: Oh, do you all need me?
4 The way I get treated when I come to BZA. I'll
5 second that motion.

6 CHAIR JORDAN: Motion made and
7 seconded. Any additional discussion?

8 (No response.)

9 CHAIR JORDAN: All those in favor of
10 the motion aye?

11 (Chorus of ayes.)

12 CHAIR JORDAN: Those opposed, nay.
13 Mr. Moy, any other business coming before the
14 Board?

15 MR. MOY: Not today, sir.

16 CHAIR JORDAN: Very good. Then we're
17 adjourned. Thank you again. Thank you all.

18 (Whereupon, the above-entitled matter
19 went off the record at 12:49 p.m.)
20
21
22

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