

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

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 4<sup>th</sup> 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

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

2 (10:25 a.m.)

3 CHAIR JORDAN: Mr. Moy, would you please call  
4 18894 please?

5 (Off record comments.)

6 Application No. 18894

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

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

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

18 MS. BRODIE: Judith Brodie, home owner.

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

21 MR. ENGEL: David Engel, Advisory Neighborhood  
22 Commissioner 3G-05.

23 CHAIR JORDAN: And who's for the Applicant?

24 MR. CROSS: I'm representing the Applicant, Mark  
25 Cross.

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

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

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

8 MR. CROSS: It is.

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

13 MS. BROWN-ROBERTS: Good morning, Mr. Chairman.  
14 Yes.

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

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

25 You have support from Office of Planning,

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1 Department of Transportation and the ANC on this. So you have  
2 the opportunity to do a presentation to the Board if you think  
3 it's necessary. But I'm saying it's not necessary, and the  
4 only thing you can do is work yourself down.

5 (Laughter.)

6 CHAIR JORDAN: If you have to say something, and  
7 then we say what, and then here we go. And we will take that  
8 as you're waiving your part of the hearing, and we'll just move  
9 on to the Office of Planning.

10 MR. CROSS: Okay.

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

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

20 We do have a letter of no objection to the relief  
21 being requested from the Department of Transportation, and  
22 we do have a representative here from ANC 3 -- which ANC?

23 MR. ENGEL: 3G.

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

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

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

5 MR. ENGEL: No sir.

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

13 (Laughter.)

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

20 VICE CHAIR ALLEN: Second.

21 CHAIR JORDAN: Motion made and second. Any  
22 discussion?

23 (No response.)

24 CHAIR JORDAN: All those in favor aye?

25 (Chorus of ayes.)

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1 CHAIR JORDAN: Those opposed nay, and the motion  
2 carries.

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

9 CHAIR JORDAN: Okay. Summaries please.

10 MR. MOY: Thank you.

11 MS. BRODIE: Thank you.

12 MR. CROSS: Thank you.

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

15 Application No. 18861

16 MR. MOY: To the table would be Application No.  
17 18861 of Justin and Margaret Kitsch. As advertised, and I  
18 believe it may have been amended, but anyways this, as the Board  
19 will recall, was continued from the November 18th hearing.

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

25 MR. MOY: Yes, thank you.

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1 CHAIR JORDAN: Please identify yourselves.

2 MR. LAWRENCE: My name is Mark Lawrence,  
3 architect of the owner.

4 MR. KITSCH: Justice Kitsch, Applicant.

5 CHAIR JORDAN: Okay. All right. This is a  
6 matter which we've actually held a hearing on before, and we've  
7 gone through and you went back and heard the discussion and  
8 you've modified and amended your request for relief from a  
9 variance to a special exception, and I think it's now ready  
10 to proceed on.

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

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

21 CHAIR JORDAN: Thank you. It was heard in  
22 November. We actually had a hearing on it on November 18th,  
23 2014.

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

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

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

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

18 So is there anyone here wishing to speak in  
19 support of this application? Anyone wishing to speak in  
20 support?

21 (No response.)

22 CHAIR JORDAN: Anyone wishing to speak in  
23 opposition? Anyone in opposition?

24 (No response.)

25 CHAIR JORDAN: We will close the hearing based

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1       upon the record that's before the Board, and I would move that  
2       we grant the amended relief under 18861 for the special  
3       exception.

4                   VICE CHAIR ALLEN: Second.

5                   CHAIR JORDAN: Motion made and second. Any  
6        discussion?

7                   (No response.)

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

10                  (Chorus of ayes.)

11                  CHAIR JORDAN: Those opposed nay. The motion  
12        carries. Mr. Moy.

13                  MR. MOY: Staff would record the vote as 4 to  
14        0. This is on a motion by Chairman Jordan to approve the  
15        amended relief for a special exception under Section 223, not  
16        meeting the yard occupancy in the rear yard. Did I say that  
17        right?

18                  Also in support or rather supporting the motion,  
19        seconding the motion, Vice Chairperson Allen. Also in support  
20        Mr. Hood and Ms. Heath. A Board member not present. Motion  
21        carries sir.

22                  CHAIR JORDAN: All right. Summary please.

23                  MR. MOY: Thank you.

24                  CHAIR JORDAN: Let's do the first case please,  
25        18893.

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1                   Application No. 18893

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

5                   CHAIR JORDAN:    Okay.    Please introduce  
6                   yourselves again for me please.

7                   MS. REATIG:    Hello.  I'm Noon Reatig from  
8                   Suzane Reatig Architecture, representing Ridge Lofts, LLC.

9                   MS. BARRINEAU:    And I'm Erin Barrineau from  
10                   Suzane Reatig Architecture.

11                   CHAIR JORDAN:    All right, okay.  It's another  
12                   which I think, based upon the circumstances, which has been  
13                   already pled to the Board in the documentation, that there's  
14                   probably enough here to grant the relief.  The Board takes  
15                   very, very seriously granting parking relief.

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

23                   (No response.)

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

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

4 (Off record comments.)

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

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

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

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

19 CHAIR JORDAN: Board, any questions of Planning?

20 (No response.)

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

23 (No response.)

24 CHAIR JORDAN: All right. We have a letter from  
25 the Department of Transportation. There's no objection to the

1 requested relief. Oh, I don't -- do we have anything from  
2 ANC-6E? Did we -- okay. I'll check that. Do we?

3 MR. MOY: Yes, we do. Sorry. Yes, we do.

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

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

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

9 MR. MOY: And I think we were signed by Chairman  
10 Padro.

11 CHAIR JORDAN: And while you're checking also,  
12 did we get a letter of authorization? You filed a letter of  
13 authorization in this case?

14 MS. REATIG: Yes, yesterday.

15 CHAIR JORDAN: Ah. See, let me tell you. These  
16 things need to get in, you know, well in advance of these  
17 hearings. We spend a lot of time going through these cases,  
18 you know. Like I said before, some time up to 12-14 hours  
19 individually, and I go through these things well in advance.

20 So to have the documentation is important, and  
21 one thing this Board has not been trying to do is to get things  
22 last minute. We used to get things, you know, 15-16 hundred  
23 pages last minute, which can change the whole complexion of  
24 what has been offered to the Board, and it's just not fair to  
25 the citizens or to the Applicant to do that.

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

4 (Off record comments.)

5 CHAIR JORDAN: Yeah. See, that's the other  
6 thing. We just got this ANC letter yesterday, and you've got  
7 to kind of read it over again to find out where they are. But  
8 this letter's been out since October 11th, 2014. Did you have  
9 a copy of the letter?

10 MS. REATIG: No, I did not.

11 CHAIR JORDAN: Okay, let me read this. "At the  
12 Commission's meeting, duly noticed and with the case listed  
13 in the notice, with a quorum present, four out of seven  
14 Commissioners required to be in attendance to achieve a quorum,  
15 ANC-6E voted 4 in favor, 2 opposed and no abstentions to oppose  
16 the request for zoning relief at 448 Ridge, to allow  
17 construction of a four family flat, okay, and that said  
18 opposition be communicated in writing to the Board of Zoning  
19 Adjustment.

25 "The applicant proposes to construct" -- that

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1 doesn't help me. All right. So the ANC has voted in  
2 opposition to this. Is there anybody here from ANC-6E on this  
3 matter? Yes, please come forward, uh-huh. Okay, good.  
4 Welcome back, and give us your name again please?

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

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

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

13 CHAIR JORDAN: Okay, that's fine.

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

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

18 MS. NIGRO: Correct, correct.

19 CHAIR JORDAN: Okay. But you -- well, let me do  
20 this then. All right. So we have that. Now we're at a point  
21 of asking anyone who wants to speak in support of this  
22 application to come forward. Anyone speaking in support?

23 (No response.)

24 CHAIR JORDAN: Anyone to speak in opposition? Okay.  
25 All right. We have two oppositions. Is that where we're at?

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1 Okay, come up. Okay, Please proceed.

2 MS. NIGRO: I just want to reiterate that the  
3 Commission voted not to support the request for a variance,  
4 and just to speak as a single member district representative,  
5 when I became Commissioner over four years ago now, you know,  
6 I had grandiose ideas that I'd be worried about education and  
7 crime and all this type stuff.

8 My number one concern for our area is always  
9 parking. I literally talk about it every day. I get emails  
10 every day about it. I'm stopped on the street about it every  
11 day, and I'm called about it every single day, for more than  
12 four years. It is my number one concern for our area.

13 Now I understand that a lot of projects in that  
14 area, they've been smaller, lots of land. Clearly, there has  
15 been room for cars, etcetera. This project is different. It  
16 is a larger space. There are clearly room for some parking  
17 spaces.

18 And as my constituents say with every new project  
19 that comes up, where's the parking? Where's the parking,  
20 where's the parking? You must support parking. So hence,  
21 this is why I'm here to say, you know, for your support, that  
22 this is what my constituents want.

23 With any larger project certainly, they would  
24 like, you know, parking to be available. More than one car  
25 helps, you have no idea. It's like it's literally off the

1 chart in our area.

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

8 "In considering the case, and as a result" -- and  
9 I know you're not representing the full ANC -- "In considering  
10 the case, and as a result of questioning the applicant's  
11 representative present at said meeting, and at prior Zoning  
12 and Planning Committee meetings, the Commission determined the  
13 following:

14 "The lot in question are located in Single Member  
15 District 6E04, and located in the Shaw Historic District. The  
16 four lots are zoned R4 and are vacant. The applicant proposes  
17 to construct four two unit flats on four lots for a total of  
18 eight units.

19 "The lots have no alley access. As the lots are  
20 located in a historic district, curb cuts will not be approved  
21 by the D.C. Historic Preservation Office, and D.C. Historic  
22 Preservation Review Board. It is therefore impossible for the  
23 lots to be developed if the parking requirement is not waived."

24 "This is the finding of the ANC. In order for  
25 this development to take place, an area variance under 11 DCMR

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1 3101 from a parking requirement is necessary. 6. The ANC  
2 Zoning and Planning Committee met and recommended that the  
3 Commission support the granting of the parking relief, noting  
4 that there is strenuous opposition to curb cuts at the location  
5 in question.

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

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

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

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

17 CHAIR JORDAN: I understand, I understand.

18 MS. NIGRO: This is why I'm here. They say you  
19 must go speak for us. This is all of my people I hear  
20 constantly in my ear literally, and some of them really scream  
21 about it.

22 CHAIR JORDAN: And we're hard on parking, and  
23 certainly like I said, if Ms. Allen certainly agrees and she's  
24 as tough as nails regarding parking, then we all are. But this  
25 is one which, as I said earlier, might provide for it. We

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1 appreciate it. Any questions Board?

2 (No response.)

3 CHAIR JORDAN: Thank you. Applicant any questions of

4 --

5 (No response.)

6 CHAIR JORDAN: No, all right. Mr. Kendrick, please.

7 MR. KENDRICK: I've prepared a written  
8 statement. I can approach you and give you my text.

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

13 MR. KENDRICK: I have -- I mean this is like one  
14 page, but I have a couple of questions that I'd like to probably  
15 direct to the Office of Planning.

16 CHAIR JORDAN: You can't do that. You can read  
17 your statement.

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

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

24 MR. KENDRICK: Okay. You already shouted me  
25 down one time today.

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1 CHAIR JORDAN: Oh no, no, no.

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

3 CHAIR JORDAN: Was it a pleasant encounter?

4 (Simultaneous speaking.)

5 MR. KENDRICK: I'm here today to speak in  
6 opposition to the battle before you. I live at 444 Ridge  
7 Street, which is directly next door to this project. I'm the  
8 past president of the Mount Vernon Square Neighborhood  
9 Association, which doesn't seem to be active anyone, and I've  
10 been in the neighborhood for about 22 years.

11 I've advocated for planning and for development  
12 in our neighborhood. So I'm not anti-development. I'm not  
13 opposed to all development projects. To my comments, the  
14 Applicant proposes to build eight unit houses -- can you still  
15 hear me?

16 CHAIR JORDAN: Yes, we do.

17 MR. KENDRICK: Eight unit houses on four lots.  
18 Based on the proposed plan, the Applicant would need four  
19 parking spaces in order to comply with the parking requirements  
20 outlined in Section 2101.1.

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

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

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

16 Even though it sits atop the Metrorail,  
17 convention goers still park in our neighborhood, for the health  
18 fair that's very popular, the auto show, the defense contractor  
19 fair, inaugural balls or whatever large show happens to be in  
20 town.

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1 will be developed at some time.

2                   This would be a great opportunity to day to set  
3 a precedent for developing single lots with single structures.  
4 Once again, I ask that you deny this variance. The record  
5 should reflect that the ANC voted to oppose the variance, after  
6 heeding the concerns of our residents.

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

11                  CHAIR JORDAN: Board, any questions?

12                  ZC CHAIR HOOD: So Mr. Kendrick, your assumption  
13 is that each resident will have a vehicle. That's what your  
14 assumption is your testimony?

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

21                  ZC CHAIR HOOD: Okay. So if we have eight units,  
22 and what you're saying if you have eight units and four cars,  
23 that's less of an impact. I mean that's common sense. But  
24 suppose they don't have any cars, and there's no way you can  
25 measure that, because I'm sure you're not going to knock on

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1 doors and see who has a car and who doesn't have a car.

2 Mr. Chairman, let me go back to the ANC  
3 Commissioner. I'm trying to understand this, because really  
4 for granting the relief, Vice Chair, it looks as though the  
5 letter, depending upon -- and Mr. Padro is seasoned. I know  
6 Mr. Padro. It looks as though the letter makes the case.

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

13 ZC CHAIR HOOD: These are your constituents,  
14 though. This is --

15 MS. NIGRO: Right.

16 ZC CHAIR HOOD: Did you meet with your  
17 constituents?

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

25 ZC CHAIR HOOD: I understand.

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

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

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

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

13 MS. NIGRO: Correct.

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

16 MS. NIGRO: And we commend you for that.

17 ZC CHAIR HOOD: Thank you. Okay, thank you Mr.  
18 Chairman.

19 CHAIR JORDAN: Yeah, go ahead.

20 VICE CHAIR ALLEN: Thank you for your testimony.  
21 I have a question for the Applicant. Is it possible to reduce  
22 the number --

23 CHAIR JORDAN: Let's go back to that when we get  
24 to rebuttal.

25 VICE CHAIR ALLEN: Oh, okay.

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

4 MR. KENDRICK: Yeah, I believe they are.

5 CHAIR JORDAN: Okay. Are there any parking lots  
6 in short walking distance, for commercial parking lots?

7 MR. KENDRICK: I think that there's one on K  
8 Street. That's the main one. That's probably the one that  
9 you used. But on Ridge Street or M Street, there's nothing  
10 around there commercially.

11 CHAIR JORDAN: Okay, okay. All right. I  
12 appreciate that. All right. So any other questions for Mr.  
13 Kendricks? Board. Then let's go to the Applicant for  
14 rebuttal, and I certainly have some questions.

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

18 MS. NIGRO: Mr. Padro is for support of the  
19 variance.

20 ZC CHAIR HOOD: Okay, thank you.

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

23 CHAIR JORDAN: But he's a very diligent guy, and  
24 he really works hard in regard to looking at these things.  
25 Going to the Applicant in rebuttal, let me ask a couple of

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1 things. One, these are flats?

2 MS. REATIG: Correct.

3 CHAIR JORDAN: And hearing the issues and  
4 concerns, but I really do see the issue about the uniqueness  
5 of this property and practical difficulty. One thing that I'm  
6 thinking about and I'm sorry, did I cut you have to -- what  
7 I'm thinking about is a couple of things, what we've done.

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

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

19 MS. REATIG: Okay. First of all, I'd like to  
20 explain the context, that it's four separate, four lots, and  
21 originally we wanted to develop these lots by right completely,  
22 and we first met with Historic Preservation to talk to them  
23 about the pre-design, and see what was possible. We met with  
24 Brendan Meyer (phonetic) from Historic Preservation, and he  
25 -- first thing he told us was that no curb cuts would be

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1 approved.

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

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

12 CHAIR JORDAN: Excuse us. Actually, we are  
13 listening, so -- we're listening.

14 MS. REATIG: Okay. So the previous life of the  
15 site, there was a community service center there, and there  
16 was a BZA case in 2004 that was approved and lasted for ten  
17 years. That was prior to when we acquired the site. There  
18 was a daycare community center there, which received parking  
19 relief and was found to meet all the requirements to receive  
20 parking relief.

21 CHAIR JORDAN: But let me -- I understand all  
22 of that. My question was very pointed. I wanted your  
23 feedback on the fact that if we may do this, I'm looking at  
24 how do we mitigate any impact upon the community? I think the  
25 -- you're going back to the original argument, and I am with

1 you on that. Others may not be.

2 MS. REATIG: Okay.

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

8 Either we can issue it by condition, or we  
9 certainly want your input, and I'm thinking that we would make  
10 these four lots. These four properties would be -- could not  
11 receive residential parking permit and we would put that in  
12 the order. The other side of it is that you would put in the  
13 lease of these -- put in the lease of the tenants that they  
14 could not have cars.

15 MS. REATIG: We hope that that is not the case.

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

17 MS. REATIG: Because this site is different, in  
18 the sense that it's not one site, it's not one big project,  
19 but it's four individual houses and --

20 CHAIR JORDAN: That potentially impact the  
21 neighborhood.

22 MS. REATIG: Yes and --

23 CHAIR JORDAN: And part of your argument in  
24 support of this, in saying the mitigation of the issue is that  
25 you're in a transportation-enriched area.

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1 MS. REATIG: Correct.

2 CHAIR JORDAN: So why should it matter?

3 MS. REATIG: One second.

4 CHAIR JORDAN: You could go for a home run, or  
5 you can go for a triple or double is what I'm saying to you.  
6 I don't know if you watch baseball or in terms of football.  
7 You can go for a touchdown on the one pass, or you can try to  
8 get a first down.

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

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

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

21 ZC CHAIR HOOD: I just know -- trust me. This  
22 is tickler for me. I just know that DDOT and the city does  
23 not enforce the first one that you mentioned about -- and trust  
24 me. So I mean we can sit here and put it down. But guess what?  
25 It won't work.

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1 CHAIR JORDAN: Does not, okay.

2 ZC CHAIR HOOD: It doesn't work.

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

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

13 CHAIR JORDAN: Okay. I'm confused. I thought  
14 I asked a question and I think Mr. Kendrick, you said there  
15 was RPP in the neighborhood. Am I wrong? Yeah.

16 MS. NIGRO: Technically we have --

17 MR. MOY: Make sure your mic is on please.

18 MS. NIGRO: Currently, we only have Zone 2, Zone  
19 6. Right now we have -- in the DDOT system, we have four blocks  
20 that are up for residential parking permits, and it's part of  
21 the process with the DDOT. It's part of their examination  
22 process.

23 So it has not -- it's far from approval, but how  
24 we got to that point is that my constituents were so utterly  
25 angry about parking that literally four blocks went ahead and

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1 ran through the neighborhood with their petitions, and it's  
2 sitting with DDOT currently, but not at approval status yet  
3 but pending.

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

7 CHAIR JORDAN: Okay, thank you.

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

10 CHAIR JORDAN: Go ahead, go ahead.

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

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

23 CHAIR JORDAN: Okay. Board, any other  
24 questions? Anything else on rebuttal?

25 MS. REATIG: Yes. I would just like to add one

1 more thing. When the site was acquired in 2013, there were  
2 four dedicated on street parking spaces used with the community  
3 service center, and they were immediately returned back to the  
4 street.

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

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

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

21 However, as far as giving great weight to the ANC  
22 letter we will do so. But the rebuttable portion of that, I  
23 think the letter contains in and of itself the portion about  
24 why relief should be granted.

25 But I think that, based upon the argument of the

1                   Applicant in its submissions, that this is an area which  
2                   doesn't encourage -- there's no need really for cars, because  
3                   it's so transportation-enriched, that they're so near the  
4                   Metro and all these other kind of things, that if we were to  
5                   grant this, that we would require the condition of this  
6                   building, that the lease be maintained and that a covenant be  
7                   placed to run with the land, that there can be no cars at this  
8                   facility by any of the tenants.

9                   That would be the way I would -- if we were to  
10                  go forward with it, that I would offer the only way that I could  
11                  see it happen.

12                  ZC CHAIR HOOD: I would concur, Mr. Chairman, and  
13                  I think that's how we really achieve and balance some of the  
14                  issues that are taken here, because you know, there's a tipping  
15                  point in this area from what we've heard from the testimony.  
16                  Even I know how the letter was written.

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

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

25                  VICE CHAIR ALLEN: I do agree with my colleagues.

1       However, and if we vote to go forward or accept the application,  
2       the obviously that would be acceptable. My concern has been  
3       and continues to be, and is especially in this case when we  
4       have an ANC, we have neighbors that are concerned.

5               We have a neighborhood that is, I think, past the  
6       tipping point, and I personally think it's -- I cannot, in good  
7       conscience, vote in support of this project, where there is  
8       such opposition and validly so. So I'm glad to hear that  
9       there's going to be an attempt to mitigate the issue if it's  
10       voted by my colleagues, but I personally cannot support it.

11               CHAIR JORDAN: Yes.

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

20               I would hope that the community would support  
21       development of these four sites, and wouldn't want to see the  
22       four sites undeveloped and continue to be vacant land. So my  
23       feeling is that we are meeting the community's request by  
24       stipulating that there can't be any vehicles within the  
25       tenant's leases.

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

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

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

14 CHAIR JORDAN: That would be my motion.

15 ZC CHAIR HOOD: I'll second it.

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

18 (Chorus of ayes.)

19 CHAIR JORDAN: Those opposed nay.

20 VICE CHAIR ALLEN: Nay.

21 CHAIR JORDAN: The motion carries. Mr. Moy.

22 MR. MOY: Staff would record the vote as 3 to  
23 0, or rather 3 to 1. This is on the motion of Chairman Jordan  
24 to approve the application for the relief requested, with the  
25 two conditions as cited by the Chairman. Also seconding the

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1 motion Mr. Hood. Also support Ms. Heath, and we have Vice  
2 Chair Allen opposed to the motion, and we have no member  
3 present. So the motion carries, Mr. Chairman, 3 to 1.

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

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

9 CHAIR JORDAN: Can we take 18888 next please?

10 Application No. 18888

11 MR. MOY: Yes sir. To the witness table,  
12 representatives to Appeal No. 18888 of Adams Morgan for  
13 Reasonable Development. This is an appeal of the Zoning  
14 Administrator's decision to issue Building Permit No. B as in  
15 Bravo 1309151, that allows mixed use residential building with  
16 ground floor retail in the C2B district, at 1700 Columbia Road,  
17 N.W.

18 CHAIR JORDAN: Okay. All right, please  
19 identify yourselves.

20 MR. THOMAS: Make sure it is on, that's right.  
21 Mr. Chairman and members of the Board, I'm Charles Thomas. I'm  
22 the interim general counsel for the Department of Consumer and  
23 Regulatory Affairs. Just taking this moment to bring to the  
24 Board's attention that we have, in addition to Zoning  
25 litigation staff, attorney Max Tondro, and he will be

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1 presenting the government's case from today and onward to the  
2 Board.

3 CHAIR JORDAN: Okay.

4 MR. LeGRANT: Good morning. I'm Matthew  
5 LeGrant. I'm the administrator of DCRA.

6 MR. TONDRO: Maximilian Tondro, Assistant  
7 General Counsel, DCRA.

8 CHAIR JORDAN: Tondro?

9 MR. TONDRO: Tondro.

10 CHAIR JORDAN: Okay.

11 MS. RODDY: Good morning. My name is Christine  
12 Roddy, and I'm with Goulston and Storrs, representing the  
13 property owner.

14 CHAIR JORDAN: Yes, and next we have?

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

18 CHAIR JORDAN: All right, thank you. We have  
19 before us on this matter two motions. One is -- well, two  
20 motions to dismiss. One's a motion to dismiss of  
21 untimeliness. The other is before us on an issue of  
22 substantive law, basically taken as a summary kind of judgment  
23 to kind of move forward with this, to dismiss this matter as  
24 I guess basic argument of law, that the requirement, as set  
25 forth by the -- what the Applicant has alleged, is not correct.

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

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

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

15                  MR. OTTEN: Thank you, Chair. This permit was  
16 approved by DCRA, which is what we're appealing on July 24th,  
17 2014. As you --

18                  CHAIR JORDAN: On July 24th, did you see that --  
19 you're familiar with the July 14th issue?

20                  MR. OTTEN: I am not familiar with that date.  
21 All I know is that we're appealing the issuance of the building  
22 permit.

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

25                  MR. OTTEN: That's correct.

1 CHAIR JORDAN: Okay.

2 MR. OTTEN: We're appealing the building permit  
3 issuance, which is what we're allowed to appeal, and that was  
4 issued July 24th. We were not made aware of that issuance  
5 until July 26th.

6 CHAIR JORDAN: And what are you -- what on the  
7 building permit are you challenging? Are you challenging the  
8 zoning issue on it or some other aspect of the building permit?

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

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

12 MR. OTTEN: We believe the building permit was  
13 incorrectly issued.

14 CHAIR JORDAN: And what do you believe was -- for  
15 the sake of what comes within the jurisdiction of this Board,  
16 what do you believe was improper in the issuing of the building  
17 permit?

18 MR. OTTEN: We believe that this proposed  
19 construction contravenes zoning regulations with regards to  
20 the rear yard and to the rooftop structure.

21 CHAIR JORDAN: So your issue is a zoning issue?

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

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

25 MR. OTTEN: I don't know what was approved July

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1 14th, 2014. All I know is the building permit --

2 CHAIR JORDAN: As you sit here -- let me ask you.  
3 As you sit here today, you don't know what was approved July  
4 14th?

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

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

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

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

23 CHAIR JORDAN: Okay. So when you went -- it's  
24 alleged by your documentation that you went out and looked on  
25 the website, on or about July 24th or so; is that correct?

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1 MR. OTTEN: No.

2 CHAIR JORDAN: You did not?

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

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

12 MR. OTTEN: No. I think we were asking about the  
13 fact that construction had started before the issuance of the  
14 building permit.

15 CHAIR JORDAN: Okay.

16 MR. OTTEN: And that we were asking for a stop  
17 work order to be issued. At that point, we didn't receive any  
18 information from anybody at DCRA, saying hey, the building  
19 permit has been issued today. We got that information two days  
20 later by mail on the 26th, and we submitted that with our  
21 initial application for this appeal.

22 CHAIR JORDAN: Okay. Ms. Roddy, do you want to  
23 respond please?

24 MS. RODDY: Chairman Jordan, I would like to draw  
25 your attention to the email from Mr. Otten dated July 24th.

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1 It states in the fourth paragraph, quote "We have checked the  
2 PIVS web page at the DCRA website for information, and we see  
3 that the building permit has not been issued."

4 And I continue "It is still under review by some  
5 DCRA disciplines." I think it's without doubt that they  
6 checked the PIVS website to see which disciplines had signed  
7 off on the building permit. As you noted, the appeal period  
8 does not run from issuance of the building permit. It runs  
9 from issuance of the determination.

10 That determination was made July 14th, and we  
11 have evidence in this email that he knew about it on July 24th,  
12 and that makes his appeal untimely.

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

16 CHAIR JORDAN: Excuse me one second.

17 MR. OTTEN: Oh sorry.

18 CHAIR JORDAN: All right. Go ahead please.

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

25 However, nobody responded from DCRA saying this

1 day we are issuing the permit. We got that notice. We had  
2 knowledge of the notice of issuance of that permit two days  
3 later. We're appealing the permit issuance, not a Zoning  
4 Administrator decision. We cannot do that by the zoning regs.  
5 We have to appeal according to an issuance of the building  
6 permit. That's in the zoning regs.

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

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

17 MR. OTTEN: So to that issue --

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

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

23 CHAIR JORDAN: Let me stop you for a second, Mr.  
24 Otten. I'm just putting forth what the issue is for the Board.  
25 I wasn't asking for any response back to that, because I've

1 given you -- both sides the opportunity to talk about --

2 CHAIR JORDAN: We never got a letter from the  
3 Zoning Administrator saying that he approved this. We can  
4 only -- as the public, as the public is aware, can appeal a  
5 building permit issuance. We cannot appeal otherwise.

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

14 MS. RODDY: Thank you. I'd also just like to  
15 clarify that we would include the rooftop structures within  
16 our motion to dismiss based on timeliness. That was not raised  
17 until two weeks ago. That's 159 days after the issuance of  
18 the building permit.

19 And we can get into this, but there was an  
20 argument made that he did not have the requisite information  
21 at the time he filed the appeal to make the argument regarding  
22 the rooftop structures, and that is absolutely not true.

23 First of all, permit plans are available to the  
24 public for review. I provided a full permit set on September  
25 19th for his review and --

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1 CHAIR JORDAN: Say that again?

2 MS. RODDY: I provided a full permit set to him  
3 on September 19th for his review. And finally I would just  
4 say that he included the rooftop structures in his appeal to  
5 the Office of Administrative Hearings. The Office of  
6 Administrative Hearings considered it, denied it. So he  
7 absolutely had that information prior to December 30th.

8 So we would include that in the timeliness  
9 dismissal. Based on the substantive with the rear yard,  
10 Section 2502.3 permits structures less than four feet in the  
11 rear yard. There's nothing greater than four feet within the  
12 rear yard. So as a matter of law, there's nothing here to  
13 contest.

14 CHAIR JORDAN: Mr. Otten, would you want to  
15 respond to the issue of -- and what do you have to show that  
16 the structure that your allegations in the rear yard is above  
17 four feet, four feet above grade?

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

20 CHAIR JORDAN: I'm asking you what do you have  
21 to offset that?

22 MR. OTTEN: We have lots of exhibits that we're  
23 willing to show today. We're prepared to show that. There  
24 are several structures in the rear yard. Besides the garage  
25 ramp, there's also a garage vent in the southeast corner of

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1 the rear yard which we're prepared to show as well, and we have  
2 that in our exhibits.

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

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

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

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

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

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

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

25 MR. OTTEN: Okay. I can do that right now.

1 MS. RODDY: Thank you.

2 (Pause.)

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

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

15 What you'll see here is this ramp leading down  
16 into the subterranean garage, with walls around it and a  
17 platform piece above it that extends -- we believe will extend  
18 higher than eight feet above grade, with the materials on top  
19 of it, and that's shown in RYE-4 as well.

20 (Pause.)

21 MR. OTTEN: That's it for the rear yard. Those  
22 are the two main structures there, and we believe that between  
23 the height to them as well as the occupation of the yard itself  
24 in terms of percentages, that it contravenes the basic zoning  
25 codes surrounding rear yard structures, as well as the

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1 definition of yard.

2 CHAIR JORDAN: Is there anything else you want  
3 to present to the Board?

4 MR. OTTEN: Did you ask about the rooftop  
5 structures?

6 CHAIR JORDAN: Yes, go ahead.

7 MR. OTTEN: You want me to submit -- I have those  
8 as well.

9 (Pause.)

10 MR. OTTEN: While we appreciate the DCRA  
11 submission, it has helped clarify some of the rooftop issues,  
12 it's still very clear by the plats on the DCRA file that we're  
13 looking at rooftop structures that extend up at different  
14 vertical heights. We're looking at rooftop structures that  
15 extend to the edge of the building.

16 CHAIR JORDAN: Under what provision are you  
17 challenging that the rooftop structure -- what part of the  
18 regulations are you challenging?

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

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

21 MR. OTTEN: Yes.

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

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

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1 CHAIR JORDAN: All right, uh-huh.

2 MR. OTTEN: That refers back to 411.

3 CHAIR JORDAN: And it recites back to 770;  
4 correct?

5 MR. OTTEN: Right, yeah, seven. That's the  
6 commercial district.

7 CHAIR JORDAN: And is there an exception for a  
8 C2B zone regarding those regulations?

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

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

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

24 CHAIR JORDAN: So there's -- you're saying R-9  
25 has other than mechanical equipment on the roof?

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

7 CHAIR JORDAN: Okay.

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

15 CHAIR JORDAN: What's the structure? What is  
16 that?

19 CHAIR JORDAN: What is that? Do we know?

20 MR. OTTEN: I was hoping to get to examination.

21 CHAIR JORDAN: Mechanical equipment?

22 MR. OTTEN: It is unclear. If it's -- it looks  
23 like the other stairwell structures. But that was where --  
24 I mean part of what we wanted to get at today was a lot of --  
25 to ask questions, to get a lot of information that has so far

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1                   been not transparently delivered.

2                   CHAIR JORDAN: So you filed this appeal on the  
3                   decision of the Zoning Administrator, so you can get more  
4                   information, not that you're claiming error in this regard to  
5                   this allegation?

6                   MR. OTTEN: We're saying just the *prima facie*  
7                   evidence of both the plans and the photographs that we've taken  
8                   show that this project is contravening the D.C. zoning regs.  
9                   The issuance of the building permit was made in error that  
10                   allows this to happen.

11                   CHAIR JORDAN: But you just said that you didn't  
12                   have enough information to conclude what you just said. Is  
13                   that what -- am I confusing you or you confusing me?

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

15                   CHAIR JORDAN: I thought you just said that one  
16                   of the bases that you were doing this because you needed  
17                   additional information to understand. I asked you directly  
18                   what was that structure that you pointed to?

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

23                   CHAIR JORDAN: And I think you also made the  
24                   statement that you wanted the basis of this so you can get  
25                   additional information, because you don't know what's there,

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1 and that's the purpose of this. Is that correct? I mean --

2 MR. OTTEN: One of the things that we were going  
3 to submit with our presentation today, our conclusion was to,  
4 after we get the information from the intervenor and Appellee,  
5 to determine a post-hearing submission that would summarize  
6 all the information we get vis-a-vis the zoning codes.

7 CHAIR JORDAN: So when you filed the  
8 application, you were not certain of what these things were.  
9 Is that what I'm understanding you're saying?

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

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

20 We've gotten that -- that came about in October.  
21 So now we're here today to show you guys that there are multiple  
22 rooftop structures here. They're at multiple heights that  
23 seems to contravene directly the zoning codes, that we want  
24 to ask questions to understand how the Zoning Administrator  
25 decided this, and how the building permit was issued based on

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1 what seems to be direct contradictions to the zoning regs.

2 CHAIR JORDAN: Does anybody have any questions  
3 of the Appellant?

4 (No response.)

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

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

15 CHAIR JORDAN: I'm doing this the way I want to  
16 get it done.

17 MS. RODDY: Okay, sure.

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

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

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

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

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

4                   MS. RODDY: I'm sorry. Which plan are you  
5 reviewing?

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

8                   MS. RODDY: Right, and tell me where you see the  
9 July 24th?

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

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

14                  MR. OTTEN: I don't know.

15                  MS. RODDY: Are you aware that that louver is no  
16 longer included on the permanent set of drawings that you  
17 referred to?

18                  MR. OTTEN: I'm not. Can you show that? Can  
19 you show that to us.

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

23                  MS. RODDY: RYE-1.

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

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

3 CHAIR JORDAN: 2014?

4 MS. RODDY: 2014.

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

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

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

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

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

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

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

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

22 CHAIR JORDAN: Yeah, okay.

23 MR. OTTEN: Do you have an exhibit for me to point  
24 to?

25 MS. RODDY: Do you have -- you know what? We'll

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1 use our exhibit.

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

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

6 CHAIR JORDAN: Thank you.

7 MR. OTTEN: DCRA's Exhibit D.

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

14 MS. RODDY: I'm asking the generator. Can you  
15 please tell me where the generator is located?

16 CHAIR JORDAN: She asked you about the  
17 generator.

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

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

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

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1 CHAIR JORDAN: Is that the rear yard?

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

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

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

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

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

13 MR. OTTEN: What I'm contending is the platform  
14 by which this generator sits exists across the extent of the  
15 ramp structure, and therefore it's in the rear yard, because  
16 the ramp is in the rear yard.

17 MS. RODDY: How tall is the platform?

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

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

23 MR. OTTEN: I do, yes.

24 MS. RODDY: Thank you.

25 MR. OTTEN: And the generator itself will be

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1 standing above that; correct?

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

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

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

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

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

13 CHAIR JORDAN: Mr. Otten.

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

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

19 MR. OTTEN: This is an unfair process. I'm  
20 supposed to be making a presentation and then they're supposed  
21 to cross-examine me on that. I don't think this is how it's  
22 supposed to unfold.

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

25 MS. RODDY: I just wanted to confirm that the

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1 platform is less than four feet tall; correct?

2 MR. OTTEN: I don't know.

3 CHAIR JORDAN: What platform are you referring  
4 to?

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

7 MR. OTTEN: The one that extends across the ramp  
8 structure?

9 MS. RODDY: Correct.

10 ZC CHAIR HOOD: Mr. Chairman, let me just  
11 interrupt. I think this is very fair process. I agree with  
12 the leadership in how you're handling this. I think the issues  
13 are being fleshed out here. So for the record, I want to put  
14 that in the transcript also. I think this is very fair  
15 process. So let's continue. Thank you.

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

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

23 CHAIR JORDAN: We're actually discussing the  
24 substance of the motions to dismiss, based upon what has been  
25 submitted by the Respondents in regards to this. I'm not going

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1 to say the grouping, because it's not necessarily Appellee's  
2 situation, and based upon what your statement is, to try to  
3 justify what she said.

4 You've made alleged factual statements, and now  
5 I'm asking questions, having the other side to ask you  
6 questions in regards to that. Now if we get to a point we can  
7 get past this motion to dismiss, then you will be allowed to  
8 make a presentation, if we can get past that point. But we're  
9 dealing with these motions to dismiss.

10 MR. OTTEN: I see.

11 CHAIR JORDAN: And it's not a one-way situation  
12 where you're allowed to say what you want to say, and not be  
13 able to be asked questions. So out of fairness, which you keep  
14 trying to push, we're being fair to the opposition also. So  
15 that's where we are. So I hope you're clear about where we  
16 are in this process.

17 MR. OTTEN: I'm trying to understand it. Thank  
18 you.

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

21 (Pause.)

22 CHAIR JORDAN: So would you repeat your  
23 question, your very direct question to Mr. Otten please?

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

1 MR. OTTEN: The platform that extends cross the  
2 ramp structure, as shown in RYE-4, along iron beams it looks  
3 like, in this picture is taller than four feet. It's above  
4 the ground more than four feet.

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

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

11 CHAIR JORDAN: Did you measure it?

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

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

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

19 MS. RODDY: Well, let's look at that comment that  
20 you're reviewing. It says that -- would you mind just reading  
21 it to me? It's a five foot generator. That's where I'm  
22 looking.

23 MR. OTTEN: Yes.

24 MS. RODDY: And what comes after that?

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

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1 MS. RODDY: Thank you.

2 MR. OTTEN: Right.

3 MS. RODDY: Now --

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

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

7 CHAIR JORDAN: Okay please.

8 MR. OTTEN: And I think it is.

9 MS. RODDY: Now you would contend that the garage  
10 and the garage ramp are illegally in the rear yard; is that  
11 correct?

12 MR. OTTEN: Yes. They occupy more than 50  
13 percent of the yard.

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

16 MR. OTTEN: Yes.

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

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

20 (Pause.)

21 MR. OTTEN: "Yard, an exterior space other than  
22 a court on the same lot with the building or other structure.  
23 A yard required by the provisions of this title shall be open  
24 to the sky from the ground up, and shall not be occupied by  
25 any building or structure, except as specifically provided in

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1 this title. No building or structure shall occupy in excess  
2 of 50 percent of a yard required by this title."

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

6 MR. OTTEN: The garage is a subterranean garage,  
7 with a ramp that has walls on three sides of it going down into  
8 that garage.

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

10 MR. OTTEN: The ramp walls are not at grade.

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

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

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

17 MR. OTTEN: It is.

18 MS. RODDY: Thank you.

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

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

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

25 CHAIR JORDAN: What we're doing, you made the

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

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

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

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

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

14 CHAIR JORDAN: They've made a definitive  
15 statement in their motion.

16 MR. OTTEN: When do I get to ask questions of that  
17 statement?

18 CHAIR JORDAN: You don't get a chance to answer.  
19 They've made a definitive motion. They have not presented  
20 anything other than that which they already submitted. I  
21 asked you what in your submission -- I was very clear about  
22 what was in their submission, what was your thoughts on it?  
23 Where are they wrong?

24 You then brought these documents and said this  
25 supports your basis for going forward. That's what you said;

1 is that correct? So that's where we are. So your next  
2 question was -- did you ask a question?

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

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

5 MR. OTTEN: I would like a legal explanation of  
6 the process.

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

9 MR. OTTEN: I would like to cross-examine. This  
10 is their motion.

11 (Simultaneous speaking.)

12 CHAIR JORDAN: Excuse me a second.

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

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

18 MR. OTTEN: The BZA is --

19 CHAIR JORDAN: You don't have authority to ask  
20 or the right to ask.

21 (Simultaneous speaking.)

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

25 MR. OTTEN: Well then this is unfair to tell us

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1 as a party.

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

4 MS. RODDY: Yes.

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

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

9 CHAIR JORDAN: Mr. Otten, Ms. Roddy asked you a  
10 question.

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

13 CHAIR JORDAN: Okay.

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

17 CHAIR JORDAN: Let me do this for the sake of the  
18 record. There are two motions pending. One was a motion to  
19 dismiss based upon timeliness. The other was pending based  
20 on the substantive of the issue moving forward.

21 The motion to dismiss, we're having a hearing.  
22 We discussed the motion to dismiss. We understood clearly  
23 what the movement has said in regards to their motion. In  
24 order to give Mr. Otten or the Appellant the opportunity to  
25 rebut those allegations contained in the motion to dismiss.

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1                   We asked Mr. Otten to prepare and to submit to  
2 this Board anything in opposition to the motion. During that  
3 time, Mr. Otten presented factual basis by submitting  
4 documents and exhibits of what he contends was in opposition  
5 to the motion.

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

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

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

21                  MS. RODDY: Thank you. Let's refer to Exhibit  
22 E in the DCRA submission. Do you see a trellis on the rooftop  
23 structures?

24                  MR. OTTEN: A trellis not a roof.

25                  MS. RODDY: I'm sorry. Do you see the trellis

1 on the rooftop structures?

2 MR. OTTEN: If a trellis is there, it is not a  
3 roof, which is what is required by the zoning ergs.

4 MS. RODDY: Does the trellis connect each of the  
5 rooftop structures?

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

7 MS. RODDY: Does the trellis connect the  
8 structure?

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

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

13 MR. OTTEN: No.

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

16 MR. OTTEN: A trellis not a roof.

17 MS. RODDY: Can you tell me the height of the  
18 trellis?

19 MR. OTTEN: No, I cannot.

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

21 MR. OTTEN: Yes.

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

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

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1 CHAIR JORDAN: Would you use the hand mic please?

2 Thank you.

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

6 CHAIR JORDAN: Well let me -- what was the  
7 question again?

8 MS. RODDY: I wanted to confirm that the trellis  
9 connected above each of the stairwells, as well as the elevator  
10 penthouse?

11 MR. OTTEN: So what I'm seeing is a trellis that  
12 connects the stairwell structures, which has a wall that  
13 extends to the edge of the building this way, and continue  
14 around in a U-shaped to each of the stairwell structures here,  
15 and connecting again all of these walls that go to the edge  
16 of the building, and then keep this open here.

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

19 MS. RODDY: Thank you. Now let's refer to  
20 RTE-6.

21 MR. OTTEN: Okay.

22 MS. RODDY: And can you tell me the height of the  
23 trellis?

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

25 MS. RODDY: Now are there any other structures

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1 that protrude above that height?

2 MR. OTTEN: Of the height of the trellis, which  
3 is not a roof? Well, the separate structure of the elevator  
4 overrun is the same height as the trellis.

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

7 MR. OTTEN: Yes.

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

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

11 MS. RODDY: .17?

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

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

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

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

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

20 MS. RODDY: Thank you.

21 MR. OTTEN: I'm not sure about what the platform  
22 height is.

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

25 MR. OTTEN: That's part of what's at play here.

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1 So we have the enclosing walls now connecting the stairwells,  
2 as well as the enclosing walls that go to the edge of the  
3 building?

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

6 MR. OTTEN: I do not.

7 MS. RODDY: Thank you.

8 CHAIR JORDAN: DCRA, any questions?

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

11 MR. OTTEN: Yes.

12 MR. TONDRO: Does that look like it is a finished  
13 structure?

14 MR. OTTEN: Does that look like it's a finished  
15 structure?

16 MR. TONDRO: Does the construction appear to  
17 have been finished and completed? Is that the final  
18 appearance of the construction?

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

23 MR. TONDRO: What I would like -- what I'm  
24 seeking to ask is whether or not that photo represents what  
25 will be the final product, or is this something that is still

1 being built and therefore other things may be added to it?

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

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

6 MR. OTTEN: There is no structure right here.  
7 But yet in the picture there is. So I don't know if that means  
8 that it's going to be torn down to meet the plans that were  
9 actually approved by DCRA or not. But that structure that's  
10 in the middle of this picture, in the foreground of the rooftop  
11 structures, is not in the DCRA plans that were approved.

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

15 MR. OTTEN: Okay.

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

19 MR. OTTEN: I see. So I took this photograph  
20 from the roof of the building by where our participating  
21 members live, two of them at least, which is approximately  
22 10-15 feet southeast of this property.

23 So looking this way, this shot is looking this  
24 way. The pointed corner of this exhibit is this pointed corner  
25 right here.

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

4 MR. OTTEN: For almost the entire length of the  
5 building, this is where the elevator and stairwell here is.  
6 I don't believe I could get that in this shot. That's too far  
7 down.

8 MR. TONDRO: You don't believe?

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

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

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

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

25 MR. OTTEN: Okay. Let me respond to that. What

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1 I'm seeing in RTE-9, our exhibit, are -- it's hard to hold this  
2 up at the same time. Basically looking at the left side of  
3 the photograph, this structure right here we're presuming is  
4 this stairhouse structure on this plat.

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

10 Further, we are presupposing that this iron --  
11 this is an iron beam that extends up above the stairwell  
12 structures. That's the elevator override. That's further  
13 down in the building here. That's the taller structure.

14 MR. TONDRO: And Mr. Otten, just to clarify,  
15 these are your observations or presuppositions, based on  
16 construction that has not been completed, not based on what  
17 has been filed and been approved, which is the subject of your  
18 appeal?

19 CHAIR JORDAN: What was that question again?

20 MR. TONDRO: I just wanted to confirm that your  
21 observations are based on construction that has not been  
22 completed, not based on what was actually filed with the  
23 building permit, which is what you are appealing; is that  
24 correct?

25 MR. OTTEN: Yes. We're trying to appeal this

1 before the construction is completed, because we don't want  
2 this building to be built in contrapositive to the Zoning  
3 Codes. This structure here doesn't appear on this plat that's  
4 in the foreground. I don't know if it's temporary or not.  
5 Maybe you would know. I don't know. We're also concerned --

6 CHAIR JORDAN: So in essence, Mr. Otten, the  
7 question that is being presented, and I'm trying to be a little  
8 bit more direct with it, is that the building is still under  
9 construction. There are items that you have placed in the  
10 picture that are maybe not there permanently, but that these  
11 things can change. So that's the question.

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

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

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

17 CHAIR JORDAN: No, no, no. Would you answer my  
18 question? I'm trying to -- so those things could change is  
19 what his question is. What you see now in the picture, you  
20 recognize that the building is not complete. What you see  
21 there could be temporary, could be permanent. But they could  
22 change; correct?

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

25 CHAIR JORDAN: So the basis of your argument and

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1 the appeal is that what you -- what you're observing right now  
2 do not meet what you see in the plans. Is that what you're  
3 saying?

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

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

13 (No response.)

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

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

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

23 MS. RODDY: Thank you, and I just would like to  
24 reiterate that the same argument that we would apply to the  
25 roof structures, is that is most definitely untimely at this

1 point. We would further then state that this should be  
2 dismissed on a substantive basis, because there's no evidence  
3 in the record that there are any structures above four feet  
4 in the required rear yard.

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

10 The louver that he had referenced is not located  
11 in the rear yard. The generator that he referenced is not  
12 located in the rear yard. The platform that he referenced,  
13 as well as the walls that surround the garage entry, are located  
14 within the rear yard, and are less than four feet in height.  
15 His testimony today confirmed that.

16 We would also submit that this appeal should be  
17 dismissed on the substance of the roof structures. We'd first  
18 state that this was actually brought to the Office of  
19 Administrative Hearings, this precise question, and the Office  
20 of Administrative Hearings also confirmed that there was a  
21 single rooftop structure.

22 He confirms that the trellis connects the  
23 structures. The precedent set forth by this Board in the *JPI*  
24 and more recently in the *Lester* cases, confirms that a trellis  
25 can be a unifying structure and roof, if it is more than 51

1 percent enclosed, as it is in this instance.

2 Mr. Otten testified that the trellis is at 14 foot  
3 6 inches, and that is a uniform height. He confirmed that the  
4 condensers on the roof are less than four feet in height, which  
5 is permitted by 411.17.

6 Mr. Otten testified that he was not aware of what  
7 the FAR was of the roof structure, therefore obviating any need  
8 to discuss 411.6, I believe, because there's no evidence in  
9 the record to suggest that it exceeds the .37 FAR that is  
10 permitted by the zoning regulations, and it in fact is nowhere  
11 near the .37 that is permitted by the zoning regulations.

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

16 CHAIR JORDAN: All right. Mr. Otten, your  
17 response to that, to the motion to dismiss based upon the  
18 structure in the rear yard and the rooftop structure?

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

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1 grade.

2 That equipment is a diesel gas generator holding  
3 gas in tanks, which according to the definitions, excuse me,  
4 to the zoning regs, a structure is anything constructed, the  
5 use of which requires permanent location on the ground, or  
6 anything attached to something having permanent location on  
7 the ground.

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

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

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

22 That is affirmed by the D.C. Office of Planning  
23 report from the BZA case 18506, which states that the majority  
24 of the rear yard is occupied by this ramp structure. Regarding  
25 the rooftop structures, it is clear by the exhibits that we

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1 have placed on the record today, that there are at least two  
2 heights to this rooftop structure, as seen in RTE-1 and 2, that  
3 there is no roof extending over the mechanicals. The  
4 mechanicals are not fully enclosed on the roof, either with  
5 a roof above them or with louvers above them.

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

14 So there are several issues with the rooftop  
15 structures, which we would be glad to get into in a full appeal  
16 presentation. Therefore, we believe the motion to dismiss,  
17 based on the facts of the structures in both the rear yard and  
18 the rooftop, should be not granted.

19 CHAIR JORDAN: Does DCRA have anything  
20 additionally they want to add to the motion?

21 MR. TONDRO: Yes, thank you. Mr. Chairman,  
22 members of the Board, I would like to just point out that under  
23 Subsection 411.14, that provision states, provides for curtain  
24 walls that are going to be without a roof, that are going to  
25 give the appearance of a unified structure. So I present that

1 as an alternative, that there does not have to be always an  
2 enclosure with a roof over it. Thank you.

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

7 MR. OTTEN: That's one issue, that we've -- in  
8 terms of just visible observation of the rooftop structures.

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

12 MR. OTTEN: That violate the zoning regs?

13 CHAIR JORDAN: The plans, yes.

14 MR. OTTEN: Well, in terms of rooftop  
15 structures?

16 CHAIR JORDAN: Just start with that, the rooftop  
17 structure.

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

21 CHAIR JORDAN: On the plans they're not showing  
22 that?

23 MR. OTTEN: Right. So partially -- sorry.

24 CHAIR JORDAN: And you're including the trellis?  
25 Those things that are connected by the trellis, you're saying

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1

2 --

3 MR. OTTEN: Yes. So this trellis goes around in

4 a U. Some of the mechanicals extend beyond this enclosed U.

5 Further, the walls that -- the curtain walls that extend

6 between the stairwell structures also extend out to the edge

7 of the building.

8 According to these plans, they're at least six

9 feet high, which is greater than four feet, which makes them

10 part of this structure as well. That juxtaposed to the zoning

11 regs does not comport, both the mechanicals not being entirely

12 enclosed and there's the lack of the one for one setback on

13 the rooftop structure as a whole.

14 CHAIR JORDAN: Okay. Is there anything else

15 DCRA?

16 MR. TONDRO: No thank you.

17 CHAIR JORDAN: Okay. Excuse us. For the sake

18 of consolidating time, and so that we can proceed on, let me

19 do it this way. I'm going to hold a ruling on the motions at

20 this particular point. Mr. Otten, let me go to the substance

21 of your appeal. Is there anything else you can present, you

22 want to present to the Board on the substance of your appeal?

23 MR. OTTEN: On the substance of my appeal?

24 CHAIR JORDAN: Yes.

25 MR. OTTEN: Okay. So you've seen -- I just

handed this to cliff. I'll make sure that the lawyers --

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1 CHAIR JORDAN: What is it and what are you  
2 talking about?

3 MR. OTTEN: I mean essentially the conclusion of  
4 the appeal, the two claims of the rooftop --

5 CHAIR JORDAN: Which document are you talking  
6 about?

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

9 CHAIR JORDAN: Okay.

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

12 CHAIR JORDAN: Okay, all right. So what are we  
13 passing out? What is this? Okay, okay.

14 MR. OTTEN: Okay. Besides the actual factual  
15 evidence, I wanted to make sure that the Board knew what Zoning  
16 Code I was working off of for the appeal, to represent Adams  
17 Morgan for Reasonable Development. I just submitted that, and  
18 then --

19 CHAIR JORDAN: Okay. We accept that in the  
20 record.

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

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

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

4 CHAIR JORDAN: I don't think standing was an  
5 issue before the Board. But go ahead. What else do you have,  
6 you're going to present to us on substantive?

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

12 CHAIR JORDAN: Is there anything else you want  
13 to present to the Board supporting your appeal?

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

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

19 MR. OTTEN: Chair, there's actually two plats on  
20 here that are -- that I didn't reduce these two. This is  
21 the sheet titled A-136, Penthouse Finished Plan dated June  
22 23rd, 2014.

23 CHAIR JORDAN: So it would be the Applicant's  
24 architectural plans, Exhibit 13 what is it?

25 MR. OTTEN: A-136.

1 CHAIR JORDAN: Okay.

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

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

11 (Simultaneous speaking.)

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

13 CHAIR JORDAN: Okay.

14 MR. OTTEN: That's it.

15 CHAIR JORDAN: Good. All right, thank you.  
16 Let me turn to the opposition, both the lack of -- because he's  
17 not really an intervenor. You're a party as a matter of right.  
18 Outside of what you presented on the motion to dismiss, do you  
19 believe that you need to present something else to the Board,  
20 to offset the substantive complaint of the Appellant?

21 We already went through a series of  
22 documentations. Is there anything else?

23 MS. RODDY: No. Thank you.

24 CHAIR JORDAN: DCRA?

25 MR. TONDRO: No. Thank you.

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1 CHAIR JORDAN: All right. Then we will close  
2 this record. Based upon what's been deduced on the motion to  
3 dismiss and including the additional substantive submission  
4 by the Appellant. I'm going to ask that all parties present  
5 a findings of fact and conclusions of law to the Board. We're  
6 going to set this for decision, Mr. Moy.

7 MR. MOY: I'm sorry. Just a second Mr.  
8 Chairman.

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

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

13 CHAIR JORDAN: He's buried in paper work.

14 (Pause.)

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

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

19 CHAIR JORDAN: No, no, no. Give me a decision  
20 date.

21 MR. MOY: Okay. February the -- February the  
22 10th.

23 CHAIR JORDAN: February 10th?

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

25 CHAIR JORDAN: February 10th is when we have the

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1 hearing?

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

3 (Simultaneous speaking.)

4 CHAIR JORDAN: Okay. Finding of facts,  
5 conclusions of law submitted by February 3rd, okay, and that's  
6 going to resolve this matter. Thank you very much. Thank you  
7 very much. I appreciate it. Let's call 18898 please.

8 Application 18898

9 MR. MOY: All right. To the witness table --

10 CHAIR JORDAN: All right. We're going to take  
11 three minutes.

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

17 CHAIR JORDAN: Very good, there we go. Please  
18 introduce yourselves.

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

22 CHAIR JORDAN: Uh-huh.

23 MS. PRINCE: Would you like me to introduce my  
24 whole panel?

25 CHAIR JORDAN: Well, they can introduce

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1                   themselves. I don't know if we're going to need a panel, but  
2                   go ahead.

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

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

6                   MR. VAN PELT: Dave Van Pelt with Grove Slate  
7                   Associates (phonetic).

8                   CHAIR JORDAN: The last name again?

9                   MR. VAN PELT: Van Pelt.

10                  CHAIR JORDAN: Okay.

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

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

18                  MR. SPECK: Yes, Mr. Chair.

19                  CHAIR JORDAN: And I just wanted to give you  
20                  time, because this is a matter which I think that it speaks  
21                  for itself in regards to the relief being requested. I think  
22                  there's -- certainly I want to congratulate and commend the  
23                  neighborhood and community for all working together and trying  
24                  to get this thing worked out.

25                  It's something that it's so important for this

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1 Board that people live together as best as they can, and  
2 sometimes it's discussion. A lot of times there's not  
3 discussions. But there's been so much discussion here, and  
4 I really appreciate that, and a very comprehensive agreement  
5 in regards to this.

6 A couple of things. I don't really have any  
7 issue or questions regarding the application. I think I  
8 understand what's going on. I see the issues. I think OP's  
9 supportive and the ANC is supportive in regards to the -- in  
10 light of the conditions, which are now an agreement. Board,  
11 is there any questions you need to get drilled down in regards  
12 to this project?

13 (No response.)

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

18 But I pulled out for conditions that we would  
19 incorporate in our document, and that would be your number one,  
20 that they -- "Ingleside shall designate a project manager as  
21 a single point of contact, who will be responsible for  
22 receiving and addressing revolving -- involving and resolving  
23 any complaints and concerns that might arise out of this  
24 relief.

25 "Ingleside project manager shall keep a log of

1 any outstanding questions and issues, and respond back to the  
2 ANC." Your Condition No. 1, Communications, I think it's C.  
3 "Ingleside shall prepare and provide to the task force for  
4 comment its plan for trees, shrubs and vegetation." That  
5 provision, keep that in place, that we will put in our order.

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

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

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

22 And G, that during -- then your 4-G. "During the  
23 period when Ingleside uses a temporary facility, there should  
24 be no more than ten assisted living residents. Staff shall  
25 consist of two persons during the day and the evening shift,

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1 up to two persons during the night." "No Ingleside employee  
2 shall park on the street."

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

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

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

17                   MS. PRINCE: I'd like to do whatever you'd like  
18 me to do. I'm prepared to make a statement. We have a full  
19 presentation of the architecture. We have the director here.

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

22                   MR. GYOR: Good afternoon Mr. Chairman, members  
23 of the Board. Stephen Gyor with the Office of Planning. We  
24 support the project and rest on the record. Thank you.

25                   CHAIR JORDAN: Good. Any questions, Board, of

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1 Mr. Gyor?

2 (No response.)

3 CHAIR JORDAN: The Applicant, any questions?

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

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

8 (No response.)

9 CHAIR JORDAN: Where's my note on DDOT? What  
10 did DDOT do with this? Okay. Department of Transportation  
11 has no objection to the requested relief. I don't know how  
12 I drove past that. I guess I got caught up on all the  
13 conditions. All right.

14 (Pause.)

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

19 MR. SPECK: I'd just reiterate, Mr. Chairman,  
20 the effort that went into producing these -- this agreement  
21 that we have with Ingleside. It's the product of literally  
22 hundreds of hours of community people meeting together with  
23 Ingleside.

24 I think this could be a model, really, for how  
25 a developer and the community could work together, to resolve

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1 a lot of very, very difficult problems that initially concerned  
2 the community very greatly, and there was, I think, a  
3 groundswell in the community that they didn't want this  
4 project.

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

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

11 (No response.)

12 CHAIR JORDAN: Okay. Ms. Prince, any  
13 questions?

14 MS. PRINCE: No questions.

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

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

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

25 [WITNESSES SWORN.]

1 MR. MOY: Thank you.

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

8 MS. ANGUS: Jayne Angus, a resident of  
9 Ingleside.

10 MS. HARRIS: Ruth Harris, resident of Ingleside.

11 MS. AGLER: I'm Ellen Agler, the executive  
12 director of Temple Sinai, representing Temple Sinai.

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

16 MS. ANGUS: Angus.

17 CHAIR JORDAN: Angus? Please, uh-huh.

18 MS. ANGUS: Like the black cow.

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

20 MS. ANGUS: I just would like to say my husband  
21 and I have lived at Ingleside for over 14 years, and we are  
22 kind of overstayed our actuarial welcome, because we're still  
23 in good health and active. My husband is currently president  
24 of the residents association, and I am a regular member of the  
25 board of directors.

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1                   We as a community of residents care very much for  
2 the whole community, and always have. So we were very much  
3 involved in the process of communicating back and forth with  
4 other residents.

5                   We have a serious concern to replace two of our  
6 older buildings that are not providing our assisted living  
7 residents and skilled nursing residents the quality of life  
8 that the rest of us have. They need to be upgraded  
9 considerably.

10                  We have currently 127 units of independent living  
11 which are full, and 199 people or couples on the waiting list,  
12 which we're part of the problem, because we're clogging the  
13 pipeline. But we have a wonderful community, and we want the  
14 community to stay a small enough size that we can all still  
15 know each other and care for each other.

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

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

24                  CHAIR JORDAN: Very good. Thank you. Next  
25 please.

1 MS. HARRIS: Thank you. I've been a D.C.  
2 resident since 1965 and a little bit before that time I was  
3 in Maryland. When my husband and I decided to leave our single  
4 family home, we were really grateful to be able to find  
5 Ingleside, which is right in the neighborhood where we're  
6 living, and it's been a very happy move for us.

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

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

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

21 Then the other thing, it's nice to still be in  
22 my own community, where we can continue to be in touch with  
23 the groups that we have known earlier, and to keep our  
24 connections with the Lafayette School and all the ANC, bless  
25 their hearts.

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

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

10                  CHAIR JORDAN:    Thank you.    Appreciate it.  
11                  Thank you for coming.

12                  MS. HARRIS:    Approve this application.

13                  CHAIR JORDAN:    Thank you for coming.  
14                  Appreciate it.    Next we have -- yes.

15                  MS. AGLER:    Hi.    Ingleside is our immediate  
16 neighbor, and we share a property line that spans the entire  
17 length of our campus.    Our institutions have enjoyed a  
18 positive relationship, characterized by having good,  
19 responsive and open communication.

20                  We've also had a cordial relationship with the  
21 ANC and have appreciated all of Randy Speck's time and  
22 commitment to establish the conditions for approval of  
23 Ingleside's BZA application.

24                  We were treated as a respected stakeholder  
25 throughout the process, and appreciate that our input was heard

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1 and responded to. We support the programmatic improvements  
2 that Ingleside is seeking to accomplish by their campus  
3 redesign.

4 Our concerns relate to the impact that years of  
5 construction will have on our temple operations. The  
6 conditions for approval document addresses these concerns, and  
7 we hope that the BZA will require adherence to those terms as  
8 a part of any approval.

9 There are five key areas of concern for Temple  
10 Sinai that I'll mention just briefly. The first has to do with  
11 construction-related parking. Parking for our temple  
12 members, guests, preschool families is extremely limited, and  
13 we rely, particularly during our nursery school drop off and  
14 pickup times and other peak times, the ability to access on  
15 street parking in the adjacent neighborhood.

16 It's very important, as a part of Ingleside's  
17 project, that an enforceable plan results in having no  
18 construction-related parking spilling over onto neighborhood  
19 streets.

20 Next, the traffic flow on Military Road. Access  
21 to our main driveway on Military Road is a daily necessity.  
22 The alternative entrance is off of a narrow stretch of Jocelyn  
23 Street adjacent to the Carnegie Institution. The need for  
24 restrictions or temporary closures on Military Road near our  
25 entrance should be minimized, and advanced notification

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1 provided, so that we can plan to mitigate potential problems  
2 with access to our campus.

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

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

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

20 We hope that Ingleside will keep adjacent and  
21 surrounding streets accessible and maintained to quorum during  
22 these holiest days of the year.

23 In summary, Temple Sinai is supportive of  
24 Ingleside's proposed programmatic changes, and we support  
25 their application if, and only if our concerns noted above are

1 addressed through the BZA's inclusion in a binding fashion of  
2 the ANC-3G's carefully crafted conditions into the BZA's order  
3 to approve the application. Thank you for the opportunity to  
4 participate.

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

7 (No response.)

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

11 (Pause.)

12 CHAIR JORDAN: Please identify yourselves.

13 MR. CARLSON: I'm Richard Carlson. I'm  
14 director of the Department of Terrestrial Magnetism of the  
15 Carnegie Institution.

16 MR. COLLINS: Christopher Collins, Holland and  
17 Knight, here on behalf of Carnegie.

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

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

22 MS. RENSHAW: Mr. Carlson?

23 CHAIR JORDAN: Okay.

24 MR. CARLSON: I'd be happy to. I'd like to give  
25 a little background on Carnegie. It's a research non-profit

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1 institution incorporated by an act of Congress.

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

5 MR. CARLSON: Okay. Well, I should get there.

6 CHAIR JORDAN: Okay.

7 MR. CARLSON: I wanted to make the point that our  
8 research, we have been on this campus since 1914 in residence.  
9 We have two research departments on this campus. We do  
10 research on earth and planetary sciences, and I'd just like  
11 to convey some of the types of work that we do.

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

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

25 We have on order of 70 staff, who are there for

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

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

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

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

19 If the vibrations are too high, it will  
20 compromise service contracts that we maintain on the  
21 instruments, that run on the order of \$400,000 a year. The  
22 vibration specs that we have for these instruments are clear,  
23 well-documented. We have documentation that our facility  
24 actually meets these specifications.

25 They were presented to Ingleside in October, and

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1 apparently of some concern, they only appreciated the  
2 significance of these vibration specifications in a meeting  
3 that we held yesterday. So we're after here simply more time  
4 in order for discussions with Ingleside, including some  
5 measurements of the transmission of vibration from Ingleside  
6 to our property, to see how big of a problem this is really  
7 going to be. Thank you.

8 MR. COLLINS: Mr. Chair and members of the Board,  
9 Ingleside is asking for a special exception, and the  
10 requirement for a special exception includes a showing that  
11 the relief will not tend to adversely affect the use of  
12 neighboring property.

13 If this application is approved without  
14 consideration of Carnegie's issues, it will have an adverse  
15 impact on Carnegie. Among the proposals is a building that  
16 is adjacent to Carnegie's property line, that includes a four  
17 level below grade parking garage.

18 There is a number of issues that Carnegie has.  
19 They have boiled down two construction-related issues. As Dr.  
20 Carlson mentioned, Ingleside only focused on the severity of  
21 these issues yesterday. Ingleside has admitted that  
22 Carnegie's issues are legitimate, that Ingleside has not paid  
23 sufficient attention to those issues, and Ingleside has asked  
24 for the record to be left open for six weeks, in order to address  
25 those issues and to also set a further hearing in case the

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1 parties cannot agree. But all parties, we believe that we can  
2 reach agreement.

3 The Board has incorporated construction  
4 management plans on other institutional cases, to address  
5 adverse impacts during construction, and I'll give you a couple  
6 of examples. *The Lab School*, Case No. 18663, January of 2014;  
7 *The Field School*, Case No. 18431, December 2012.

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

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

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

23 CHAIR JORDAN: Thank you. Ms. Renshaw.

24 MS. RENSHAW: Mr. Chairman and members of the  
25 BZA, and guests and residents of Ingleside, my name is Anne

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1 Renshaw. I'm a 40-year resident and owner of 2910 Military  
2 Road, which abuts the Ingleside retirement community.

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

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

16 First, what's the rush? On December 1st, 2014,  
17 I appealed to the ANC to request a postponement, citing project  
18 reports not yet submitted to the ANC or BZA. That request was  
19 denied. Four reports, we note, were only filed with the BZA  
20 in the last two weeks.

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

1                   Second, I want to touch on the big business of  
2 aging. Ingleside's application is more about expanding,  
3 albeit non-profit business and its bottom line. Private  
4 continuing care communities, including Ingleside, compete for  
5 residents via advertising and aggressive marketing. To stay  
6 competitive, more and better amenities must be part of the  
7 sales package.

8                   Moreover, we note that the buildings come next to  
9 house the additional senior population, which according to OP  
10 desires support and amenities. More occupants require extra  
11 staff, that may or may not use public transportation to and  
12 from work.

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

22                   Third, the building height and the Tunisian  
23 Ambassador's residence. In 1996, the community killed the  
24 Holiday Inn high-rise design floated by the home as its new  
25 Ingleside apartment building. We note for the record that

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1       nearby Forestside and St. John's College High School at  
2       Military Road and 27th Street, N.W., are both low-rise  
3       buildings in keeping with the residential area.

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

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

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

21               Fourth, the environmentally sensitive ravine.  
22       A former Tunisian Ambassador wrote to the BZA a letter back  
23       in 1996, stating his Embassy's objections to Ingleside's  
24       expansion along the west ravine, and I quote that in my  
25       testimony.

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

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

9 CHAIR JORDAN: Thank you.

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

16 I talk about construction in the 30 months of six  
17 day a week demolition and pile driving and earth moving. It  
18 will be 30 plus months during which the quiet enjoyment of our  
19 homes will be lost and never recouped. The residents will be  
20 awarded by amenities. Outlier senior citizens may only get  
21 a bed in which to recuperate after breaking a hip.

22 We have multiple conditions from the ANC, but I  
23 remember back in 1996 that there were conditions that were  
24 promised that did not work out. They rather fizzled. We feel  
25 that there will be parking in the neighborhood. It's going

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1 to happen.

2                   Ultimately, the Broad Branch grassy area across  
3 from a shared driveway of Ingleside and the Tunisian Ambassador  
4 will become a prime construction parking area, hopefully this  
5 time with the approval of both public space and Rock Creek Park.

6                   Lastly and importantly, Military Road and  
7 traffic. The conditions are terrible on Military Road, and  
8 the traffic is worse and worse. It suffers from the absence  
9 of permanent traffic enforcement, faulty traffic signals and  
10 uneven sidewalks, which impact pedestrian safety.

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

17                  CHAIR JORDAN: I've --

18                  MS. RENSHAW: Please, just I --

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

21                  MS. RENSHAW: All right. But I just want to say  
22 please, in conclusion, that Ingleside may meet its burden of  
23 proof, but we ask at what expense. Regardless of having its  
24 acreage, Ingleside should limit future high- and mid-rise  
25 construction, so that the charm of surrounding neighborhoods

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1 will not be devalued due to Ingleside's institutional  
2 ambitions. Thank you.

3 CHAIR JORDAN: Thank you. All right. Does the  
4 Applicant have any questions they want to ask any of the  
5 witnesses?

6 MS. PRINCE: I do not.

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

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

12 CHAIR JORDAN: Yes. Go ahead, please.

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

18 But there's one thing missing, and I want to  
19 reiterate what Mr. Collins said, because this is a matter of  
20 commitment that Ingleside has made to Carnegie. We want to  
21 reiterate the importance of the record being left open for an  
22 agreement with the Carnegie Institute.

23 We underestimated the magnitude of their issue.  
24 We have committed to working on it. We have hired the  
25 appropriate consultants to do that, and we will work in

1                   incredibly good faith to try to achieve an agreement. We've  
2                   made that commitment to Carnegie.

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

7                   That's of course your call. We believe all the  
8                   other issues have been addressed exhaustively, but we did not  
9                   want to leave this Board with the impression that we feel we  
10                   need to honor the commitment that we made to Carnegie, to  
11                   continue to work on an agreement.

12                   So we would ask that you consider that in your  
13                   -- as you think further about this case. Other than that, we  
14                   believe that the record is complete.

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

20                   So it's for the applicants to know that their  
21                   cases are ready to go. It's also something that's important,  
22                   that the applicants do reach out and talk to the community as  
23                   soon as possible and not the last minute, because people should  
24                   have the opportunity to weigh in.

25                   MS. PRINCE: Uh-huh.

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

7 It wasn't taken seriously until the other day,  
8 which gives me great concerns. I know you were working with  
9 the ANC and others in the community. I understand that, and  
10 I appreciate that. But backing up the dockets because the  
11 Applicant may not be ready to go, for something that could have  
12 been taken care of a long time ago just gives me some rub.

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

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

22 ZC CHAIR HOOD: Mr. Chairman, I would concur.  
23 When I first read that was line laid out by Ms. Prince, and  
24 possibly in six-seven weeks we might have to come back and have  
25 a limited scope hearing. I think from what I'm hearing, I

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1 think you all will come back working together so we won't have  
2 to have a scope hearing, because I'm not favorable in having  
3 another hearing.

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

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

15 CHAIR JORDAN: Thank you. Mr. Moy.

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

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

20 MS. PRINCE: Thank you.

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

23 MR. MOY: March 10th.

24 CHAIR JORDAN: March 10th. All right. Thank  
25 you very much. Thank you all for coming. Thank you for taking

1 times out of your day and sitting here, and see how much fun  
2 we have here on Tuesday. As you know Ms. Renshaw, it can be  
3 -- this one was not -- this wasn't a bad day at all, you know.  
4 We can, you know, have some very interesting things come here.  
5 Wow, a reality show.

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

8 VICE CHAIR ALLEN: Yes.

9 CHAIR JORDAN: Ms. Allen.

10 VICE CHAIR ALLEN: I would like to move in the  
11 course of business that for this upcoming year, is that the  
12 time frame, the upcoming year, I move that Lloyd Jordan be chair  
13 of the BZA. I'd like to also move that Marnique Heath be the  
14 new vice chair of the BZA.

15 CHAIR JORDAN: Second?

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

18 CHAIR JORDAN: Motion made and seconded. Any  
19 additional discussion?

20 (No response.)

21 CHAIR JORDAN: All those in favor of the motion  
22 aye?

23 (Chorus of ayes.)

24 CHAIR JORDAN: Those opposed, nay. Mr. Moy, any  
25 other business coming before the Board?

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1 MR. MOY: Not today, sir.

2 CHAIR JORDAN: Very good. Then we're  
3 adjourned. Thank you again. Thank you all.

4 (Whereupon, the above-entitled matter went off  
5 the record at 12:49 p.m.)

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