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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

9:45 a.m. to 2:03 p.m.

Tuesday, October 28, 2014

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220-South

Washington, D.C. 20001

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1 Board Members:

2 LLOYD J. JORDAN, Chairperson

3 JEFFREY HINKLE

4 MARNIQUE HEATH

5 ANTHONY HOOD, Zoning Commission Chairman

6 PETER MAY, Zoning Commissioner

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P R O C E E D I N G S

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CHAIRPERSON JORDAN: So we can come to order, please.

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Good morning. Today is October 28th, 2014. We're here for the meeting of the Board of Zoning Adjustment for the District of Columbia. My name is Lloyd Jordan, Chairperson. To the right of me is Jeffrey Hinkle, member of the board. To my left, Marnique Heath, member of the board. And to her left, Anthony Hood, Chairman of the Zoning Commission, sitting in temporarily as a member of the Board of Zoning Adjustment.

We're going to be doing a lot jacking around with the docket today. We have members of the Zoning Commission handling certain cases and others that are not. So we're going to be managing the docket as best as we can.

We're located at Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. Today's recording is being broadcast webcast live and also being recorded by a Court Reporter, who is seated to my right. So, therefore, I'm going to ask you to refrain from any disruptive noises here in the hearing room.

If you're not familiar with how we operate, the door to my left, the back door to my left, there should be some documents that will tell you how we process and operate here at the Board of Zoning Adjustment. If you're going to provide any

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1 testimony to the board, read any statement, address the board
2 in any manner, read a statement, a letter, the whole shebang,
3 if you're going to address the board, I'm going to need you to
4 do two things prior to you providing that statement or
5 testimony to the board.

6 So if you're going to address the board in any manner
7 by statement or testimony, I'm going to need you to do two
8 things, the first of which is to complete two witness cards per
9 person. That's two witness cards per person. And prior to
10 testifying -- prior to testifying, give those two cards to the
11 Court Reporter who is seated to my right.

12 Let's do that one again because we miss it sometimes.
13 Each person, two witness cards per person, and prior to
14 testifying, please give those cards to the Court Reporter to my
15 right.

16 The second thing I'm going to need you to do is to
17 now stand and take the oath, which will be given by Mr. Moy.
18 So if you're going to provide a statement or testimony, please
19 stand at this point and take the oath being given by Mr. Moy.

20 MR. MOY: Good morning. Do you solemnly swear or
21 affirm that the testimony you are about to present in this
22 proceeding is the truth, the whole truth, and nothing but the
23 truth?

24 (Whereupon, the witnesses were sworn in.)

25 MR. MOY: Ladies and gentlemen, you may consider

1 yourselves under oath.

2 CHAIRPERSON JORDAN: We have some informal matters we
3 need to handle, but let me see. Mr. Moy, any announcements
4 from you?

5 MR. MOY: My announcements for this morning -- I
6 don't have anything for you this morning, sir.

7 CHAIRPERSON JORDAN: Okay. Well, good.

8 Application No. 18844

9 CHAIRPERSON JORDAN: Let's handle some things on the
10 formal matters. Let me have a representative from Case 18844
11 to come forward, please, just a representative or the
12 Applicant, 18844.

13 (Pause.)

14 CHAIRPERSON JORDAN: 18844? Are you that person?
15 Are you on 18844?

16 MR. GREIGG: 18844.

17 CHAIRPERSON JORDAN: Okay. Please take a seat and
18 turn the microphone on for me.

19 (Pause.)

20 CHAIRPERSON JORDAN: And give us your name, please.

21 MR. GREIGG: Excuse me. Yes. My name is Michael
22 Greigg. I am with Soe Lin and Associates Architects.

23 CHAIRPERSON JORDAN: All right. Are you the
24 representative here? Or do we have a letter of representation
25 for you on this case?

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1 MR. GREIGG: I have a letter of representation with
2 me. But the owner of the home should be here momentarily. I
3 just got an email that they were downstairs.

4 CHAIRPERSON JORDAN: Okay. All right. Well, a
5 couple of things. The reason why I called this up, there is no
6 affidavit of posting. And the self-cert is not -- it's signed,
7 but there's no Bar number or architect's number to the self-
8 cert. So prior to calling this case back up, I'm going to need
9 you to take care of -- your client to take care of those things
10 before we move forward.

11 MR. GREIGG: Yes, sir.

12 CHAIRPERSON JORDAN: Thank you. That will be it.

13 MR. GREIGG: So we're getting delayed to next month,
14 correct?

15 CHAIRPERSON JORDAN: Well, you can. Do you need to
16 be delayed? Have you posted? Do you know if this property has
17 been posted?

18 MR. GREIGG: Yes, it's been posted.

19 CHAIRPERSON JORDAN: And they filed the affidavit?
20 Or do they have the affidavit to file?

21 MR. GREIGG: I have the affidavit with me.

22 CHAIRPERSON JORDAN: All right. I'm going to ask you
23 to -- excuse me a second.

24 (Pause.)

25 CHAIRPERSON JORDAN: Okay. I'm going to ask you to

1 go across the hall to the Office of Zoning and take those
2 documents there, and they will help you process what needs to
3 be given to the board.

4 MR. GREIGG: Great. Thank you.

5 CHAIRPERSON JORDAN: And we'll make a determination
6 at that point whether or not we go forward. Thank you.

7 Application No. 18809

8 CHAIRPERSON JORDAN: Is anyone here on 18809? 18809?
9 18809?

10 (Pause.)

11 CHAIRPERSON JORDAN: That case is Industrial Bank of
12 Washington, 18809. Then, this matter was on for show cause for
13 failure to appear the last time it was set. Is that correct,
14 Mr. Moy?

15 MR. MOY: Yes, sir. There were two dates, September
16 9th and September 30th, 2014.

17 CHAIRPERSON JORDAN: All right. Thank you. I'm
18 going to move that the board dismiss this case.

19 MR. HOOD: I'll second it.

20 CHAIRPERSON JORDAN: Motion made and seconded.
21 Discussion?

22 (Pause.)

23 CHAIRPERSON JORDAN: All those in favor of the
24 motion, Aye?

25 (Chorus of "Aye.")

1 CHAIRPERSON JORDAN: Those opposed, Nay?

2 (No audible response.)

3 CHAIRPERSON JORDAN: Mr. Moy?

4 MR. MOY: Yes, sir. Staff would record the vote as
5 five to zero on the motion of the board to dismiss by Chairman
6 Jordan, also support, seconded the motion rather, Mr. Hood,
7 also support, Ms. Heath, Mr. Hinkle.

8 SPEAKER: Four to zero.

9 MR. MOY: Four to zero, rather. Thank you.

10 (Laughter.)

11 MR. MOY: I'm losing my count.

12 CHAIRPERSON JORDAN: The motion carries.

13 MR. MOY: There was one missing.

14 CHAIRPERSON JORDAN: Right. Thank you.

15 Dismissed for failure to prosecute the case.

16 MR. MOY: Yes.

17 (Motion of the board to dismiss case 18809 passed.)

18 Application No. 18708

19 CHAIRPERSON JORDAN: I need a representative from
20 each party and the Applicant on 18708.

21 (Pause.)

22 CHAIRPERSON JORDAN: 18708.

23 (Pause.)

24 CHAIRPERSON JORDAN: Okay. Please identify yourself.

25 MR. SULLIVAN: Good morning, Mr. Chairman and members

1 of the board. My name is Marty Sullivan with the law firm of
2 Sullivan and Barros, on behalf of the Applicant.

3 MR. WIERSCHEM: Good morning, board. My name is
4 Marcus Wierschem. I'm coming from the German Embassy. And we
5 didn't know about this issue for a couple of weeks. So I'm
6 just here to listen what's going to happen because our property
7 of the Deputy Ambassador is next to the property they want to
8 build up the house.

9 CHAIRPERSON JORDAN: All right. So you're just here
10 to hear what's going on? You're not going to provide
11 testimony?

12 MR. WIERSCHEM: Well, actually, we want to hear
13 what's going on. And also, our embassy, they wrote a letter.
14 I don't know if everybody received this letter. We don't want
15 to take any party or stay on any side. We just want to follow
16 up this case. And if you like, I can -- I don't know. Did you
17 receive my letter, or my colleague's letter? It's dated 22nd
18 of October.

19 CHAIRPERSON JORDAN: Well, let me come back there.
20 We're not handling that at this point. I want to make sure,
21 one, when we go forward with the hearing, is it your intent to
22 read the letter? Or you just simply want to make sure it's in
23 the file?

24 MR. WIERSCHEM: Well, I want to do both, actually.

25 CHAIRPERSON JORDAN: Okay. Then we will come back to

1 that. And you have not made a request for party status. So
2 that's kind of what I'm trying to handle right now. So we'll
3 come back to you.

4 MR. WIERSCHEM: Okay. Thank you.

5 CHAIRPERSON JORDAN: Yes.

6 MS. MOLDENHAUER: Good morning, Mr. Chairman, members
7 of the board. My name is Meredith Moldenhauer from the law
8 firm of Griffin, Murphy, Moldenhauer, and Wiggins. And I'm
9 here representing the consolidated group of a party status in
10 opposition, including the Foxhall Crescent HOA.

11 CHAIRPERSON JORDAN: All right.

12 Let me ask you, Mr. Sullivan. Are you objecting to
13 the representative of Foxhall Crescent organization? Because
14 in reading your brief, you seem to challenge the
15 representation.

16 MR. SULLIVAN: We challenge it on grounds that may
17 not be applicable to your consideration. We don't dispute that
18 there are a couple board members from the HOA that are
19 obviously adjacent to the property and entitled to party
20 status. We have members of the HOA who are in support and
21 claim that the HOA does not have authorization to file such a
22 party status application. I'll leave it at that.

23 CHAIRPERSON JORDAN: Ms. Moldenhauer, could you reply
24 to that? Do we have a letter from the association? Or is
25 there a vote taken that -- is it Mr. Gottlieb? Is that the

1 representative?

2 MS. MOLDENHAUER: I've actually attended multiple
3 board meetings, and they voted to move forward in opposition of
4 this case. And there is a recorded covenant, obviously, which
5 have specific interests in preserving and protecting the
6 community.

7 CHAIRPERSON JORDAN: Do we have anything from the --

8 MS. MOLDENHAUER: We have copies of the bylaws if the
9 board would like to have that.

10 CHAIRPERSON JORDAN: Do we have a copy of the action
11 by the association?

12 MS. MOLDENHAUER: This is a decision to not enter
13 into a formal resolution. But we have formal email
14 confirmation, and again, I was present at that meeting.

15 CHAIRPERSON JORDAN: But you were there. You were
16 present. And your word is good enough.

17 MS. MOLDENHAUER: Thank you.

18 CHAIRPERSON JORDAN: Thank you.

19 All right. So then, we will certainly accept them
20 and the consolidated group being represented by Ms.
21 Moldenhauer.

22 I'm going to ask that, as typical and as usual, that
23 the parties have conversation, the Applicant and the parties,
24 status -- parties. And see if you can work these things out.
25 As you know, having that conversation has been very beneficial

1 prior to us having a hearing.

2 And I really require -- we really require serious
3 conversation. It's not a two-minute walk outside the door,
4 walk out one door, come back in, and say, "Oh, we couldn't
5 resolve it." We're very serious about you having frank
6 discussions.

7 And those groups and organizations who have gone
8 through this process where they thought they could not come to
9 an agreement have, surprisingly -- even a party one time we had
10 with 12 folks, they all came to an agreement. So, serious
11 conversations. Please do not walk outside this door and come
12 back in.

13 MS. MOLDENHAUER: Could we use a conference room?
14 Because I know we have a large group.

15 CHAIRPERSON JORDAN: Yes, Ms. Moldenhauer, we can.
16 Yes, for sure.

17 MR. MOY: The green conference room in the lobby area
18 should be sufficient if it's available.

19 MS. MOLDENHAUER: I'll ask. I'll speak to them.

20 CHAIRPERSON JORDAN: Thank you so much. Thank you.

21 (Pause.)

22 Application No. 18793

23 CHAIRPERSON JORDAN: Okay. All right, Mr. Moy.

24 Let's handle 18793 first, please.

25 (Pause.)

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1 MR. MOY: The case before the board in decision
2 meeting is appeal number 18793 of 22 West A Condominium
3 Advisory Neighborhood Commission 2A. This was last heard, Mr.
4 Chairman, on July 22nd, 2014, set for decision today, October
5 28th. On record was a motion to dismiss, as well as a response
6 to a motion to dismiss. The board is to act on the motion and
7 then on the merits of the appeal.

8 CHAIRPERSON JORDAN: All right. Thank you.
9 Is the board ready to deliberate on this case,
10 everyone?

11 (Chorus of "Yes.")

12 CHAIRPERSON JORDAN: Okay. First before us is the
13 motion to dismiss. There was a motion to dismiss filed
14 contending that this appeal was not timely. This is a matter
15 that gives me great concern, not only because of this case, but
16 also because of how these things are being presented to the
17 board.

18 And we've had, you know, appeals being taken. And
19 the issue is on a question of timeliness. As the code is
20 written and as the regulations are written, it still comes down
21 to the Board of Zoning Adjustment making that determination as
22 to what is considered timely.

23 And basically, to me -- and we have decisions or
24 actions of the Zoning Administrator that, depending on -- well,
25 we get emails where the Zoning Administrator might have been

1 asked a question and he might give an opinion, not necessarily
2 a decision. Some take it as a decision.

3 We might get a letter of advice or recommendation
4 from the Zoning Administrator about how a matter can be
5 handled, and it's been considered a decision. Then we have the
6 issuance of certificates of occupancy or sign-off on the
7 application for a building permit, and they're considered
8 decisions, and the board has been asked to determine whether or
9 not, when the clock starts.

10 And this was another one of those matters, to me,
11 which the issue should come down not any action of the Zoning
12 Administrator, but an action that should be considered, what is
13 an appealable decision of the Zoning Administrator? Is it a
14 final action?

15 I mean, even if the Zoning Administrator issues, and
16 this is my thought on the matter, solely my thought on the
17 matter. The Zoning Administrator might have issued an email
18 that said, "Okay, I think this is okay" or a letter to that
19 effect. But is that the final action? Is there an ability for
20 the Zoning Administrator to subsequently change their mind,
21 come the certificate of occupancy, once they see the plans or
22 issues with building permits?

23 So I really think we need to look at, as a board, to
24 send some consistency to the public at large that we should
25 only be looking at the time frame running from what would be

1 considered either a final decision of the Zoning Administrator,
2 one that's incapable of being changed, or one that there's been
3 action taken to the detriment of the actor.

4 I mean, we really -- this is just my thought, you
5 know, offering to the board to what you think about it. I
6 think if we look at decisions with this kind of standard, then
7 the board would give some certainty or have some certainty as
8 to what is appealable and when the clock stops. And I can
9 think of, you know, some of our Georgetown, George Washington
10 University cases with the store and others.

11 Then I also went back and did a scan of the cases
12 that we've actually had this question come up. And it's just
13 all over the place. Sometimes, we're called upon to have the
14 decision of timing, as I said, quote-unquote, on the emails or
15 letters or other actions or advisory letters of the Zoning
16 Administrator. But later, there's later another decision
17 that's made.

18 So, I mean, I think we really need to look at making
19 sure it's a final decision of the Zoning Administrator. And
20 maybe we're stepping out a bit on that, Mr. Hood. Maybe it's
21 something that the Zoning Commission might want to grab on the
22 rewrite or whatever it is. But it should be a real decision,
23 one that's incapable of being changed by the Zoning
24 Administrator or that the actor has actually done something in
25 their detriment.

1 And we've had other cases, as you know, where people
2 come in and say, "Yeah, we thought the Zoning Administrator
3 meant this. But we -- and we took an action, and we relied on
4 it. And to our detriment, we spent thousands and thousands of
5 dollars, and we built up a wall," or whatever. So that's kind
6 of the criteria that I would look at in these kind of cases.

7 So I would submit that the interpretation of the
8 words "administrative decision" should be one which means
9 something that is final and capable of being changed by the
10 Zoning Administrator, or one where the actor has done something
11 to their detriment.

12 Here, the earlier building permit in this case was
13 not focused, in my opinion, on the signage. At best, it was an
14 interlocutory decision by the Zoning Administrator, who made
15 sign-off on the approval on the application for the overall
16 building permit for the property. Subsequently, there was a
17 requirement under the building code -- well, under the zoning
18 regulations for signage, refers to the building code in regards
19 to the signage aspect of it.

20 And there was a subsequent request for signage
21 permit. A subsequent application was prepared, and that was
22 given -- the approval for the signage was therefore not granted
23 by the building permit of October 2012, in my opinion.

24 And I think to go back to the Zoning Commission's
25 approval of the PUD is just too far-fetched to say that anybody

1 in opposition to that should have filed opposition with the
2 Zoning Commission, and that's when the clock starts. Because
3 plans change left and right from the Zoning Commission's PUD
4 decisions.

5 So I don't think that's a fair time to start the
6 clock. And sometimes, we can have Zoning Commission activity a
7 year or two years prior to anything actually taking place for
8 the public to really have notice or have reasonable notice.

9 So the building permit of 2012, and then the Zoning
10 Administrator's letter of February 28, 2014, to me were not
11 final decisions. They were more interlocutory regarding this
12 matter. Regarding the signage, the Zoning Administrator could
13 have disapproved the signage application; he still could have.

14 So to me, I think that there has not been a showing
15 that the appeal is untimely. In fact, it is probably even a
16 little bit premature as timely, because when the application
17 for the signage permit went in, I think it was May 2014 is the
18 date or something in there, and the application then, to me,
19 would be timely. And I would deny the request to deny this on
20 the motion to dismiss. That's my thought.

21 MR. HOOD: Okay. I will second that motion. I don't
22 need to elaborate on all the specifics that you've already
23 mentioned. I think you've done an eloquent job of it. And I
24 think this will be precedent-setting to a point, you know,
25 because any action this board or the commission can rule, and

1 they make rules on the merits.

2 But I think you have captured this the way I see it,
3 and I'm ready, Mr. Chairman, to move to the merits. And I'll
4 second that motion.

5 CHAIRPERSON JORDAN: I'll make the second, make a
6 second. Any other discussion on readiness on the denying of
7 the motion to dismiss?

8 All those in favor, Aye?

9 (Chorus of "Aye.")

10 CHAIRPERSON JORDAN: Those opposed, Nay.

11 (No audible response.)

12 CHAIRPERSON JORDAN: Mr. Moy?

13 MR. MOY: Yes, sir. On Chairman Jordan's motion to
14 deny the motion to dismiss, second the motion is Mr. Hood.
15 Also support, Ms. Heath and Mr. Hinkle. The motion carries
16 four to zero.

17 (Cross-talk.)

18 MR. HINKLE: Mr. Moy, I'm not participating.

19 MR. MOY: Oh, that's right. You are recused. That's
20 right. That's correct.

21 MR. HINKLE: I'm just sitting here keeping them
22 company on this case.

23 (Laughter.)

24 MR. MOY: When I see you there, it throws me off.

25 Okay. So the final vote is three to zero then.

1 (The motion to deny the motion to dismiss the appeal
2 in case number 18793 passed.)

3 CHAIRPERSON JORDAN: He previously recused himself
4 from this matter. Okay. And we appreciate letting us know the
5 issue.

6 On the merits of this case, is the board ready to
7 deliberate? This is another issue that gives me great pause,
8 and we have --

9 MR. MOY: Oh, Mr. Chairman.

10 CHAIRPERSON JORDAN: Yes.

11 MR. MOY: I'm very sorry to interrupt. I do have an
12 absentee ballot from another participant, who on this aspect of
13 the motion rules with the board in terms of denying the motion
14 to dismiss. So my full count was correct, so it would be four
15 to zero.

16 CHAIRPERSON JORDAN: And that's from Kathryn Allen?

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

18 CHAIRPERSON JORDAN: Very good. Thank you. Who's
19 not with us today, but who participated in the earlier hearings
20 on this matter.

21 And simply on the merits of this, I believe the PUD
22 order was not clear. And I believe the PUD order was clear and
23 not ambiguous. I believe the order does state, does refer to
24 Exhibit 24 and 36; however, as to the signage, the order
25 referred to Exhibit 24 even when it was discussing Exhibit 36.

1 The Zoning Commission said there must be certainty in
2 the signage order and referred again to Exhibit 24, even though
3 Exhibit 36 existed. In my opinion -- and it's simply my
4 opinion -- the specifics of the order address signage in a way
5 referring to Exhibit 24 as opposed to Exhibit 36. And the
6 specificity of the order would control, in my opinion, over
7 what was generally talked about in regards to other exhibits in
8 this particular zoning order.

9 So I would not be in support of sustaining the
10 decision of the Zoning Administrator. In fact, I would look to
11 reverse the decision in this matter, based upon what's in
12 Exhibit 24. But that's just my opinion.

13 You're not in it, so I got to stop looking at you.

14 Anyone else want to talk about it? Any other issue?

15 Well, then, I would move that --

16 MR. HOOD: I would just say, I just want to give
17 another board member a chance. But I would just say that the
18 way I see it, and if you look at the commission's original
19 order, it specifically says -- and I think we're saying the
20 same thing -- that the hotel sign shall be above the hotel's
21 entrance. And it talks about one sign.

22 CHAIRPERSON JORDAN: That's right.

23 MR. HOOD: So I think that's clear. I think when
24 things are filed for purposes, when people come later on and
25 file things and think -- well, I'm not going to get into all

1 that. But I think the decision, what's written, is what we go
2 by.

3 CHAIRPERSON JORDAN: That's right.

4 MR. HOOD: Okay. I think we're saying the same
5 thing. So I think it's clear.

6 CHAIRPERSON JORDAN: So I would move that we reverse
7 the decision of the Zoning Administrator regarding this signage
8 issue and rule in favor of the appellants on this matter.

9 MR. HOOD: Second. I'm sorry. No, I'm going to let
10 you do it.

11 CHAIRPERSON JORDAN: Motion made and second.

12 Any further discussion?

13 All those in favor of the motion, Aye.

14 (Chorus of "Aye.")

15 CHAIRPERSON JORDAN: Those opposed, Nay?

16 (No audible response.)

17 CHAIRPERSON JORDAN: Mr. Moy?

18 MR. MOY: Sir, before I do the vote count, again on
19 the second component of the absentee ballot from Ms. Allen, her
20 absentee vote was to grant the appeal. So that would give a
21 vote of four to zero on the motion.

22 CHAIRPERSON JORDAN: No, no, no -- oh, you said to
23 grant. Okay. Got it.

24 MR. MOY: Um-hm. Where was I? Okay, so this is on
25 the motion of Chairman Jordan. Second the motion -- was it --

1 CHAIRPERSON JORDAN: It was Ms. Heath.

2 MR. MOY: Okay. It was Ms. Heath. We'll make it Ms.
3 Heath. Also in support, I have Mr. Hood, and with the absentee
4 vote, that would give a total vote of four to zero.

5 CHAIRPERSON JORDAN: Okay. Good. Then the motion
6 passes. All right. Thank you.

7 (The motion to reverse the decision of the Zoning
8 Administrator regarding signage, and rule in favor of
9 appellants, in appeal case number 18793 passed.)

10 (Mr. Hood exited the room; Mr. May took his place.)

11 CHAIRPERSON JORDAN: All right. I think that takes
12 care of Mr. Hood for this morning. I think it does. Yeah, we
13 had another, but they did not show and we dismissed them.

14 (Inaudible interjection and laughter.)

15 CHAIRPERSON JORDAN: We wouldn't throw you out, of
16 all people. Thank you.

17 SPEAKER: Thank you.

18 (Pause.)

19 CHAIRPERSON JORDAN: Let's wait for Mr. May.

20 (Pause.)

21 CHAIRPERSON JORDAN: We welcome Zoning Commissioner
22 Peter May, who will sit in as a member of the Board of Zoning
23 Adjustment for the rest of the day. Very good. Thank you.

24 Let's do our first decision case, please.

25 Application No. 18846

1 MR. MOY: Okay. The expedited review calendar, Mr.
2 Chairman, has two applications. The first is application
3 number 18846 of Shawn Birds. The second case on the calendar
4 is application number 18831 of Kira Vol, V-o-l. And that's
5 before the board for decisions.

6 CHAIRPERSON JORDAN: All right. Thank you.

7 Is the board ready to deliberate on 18846? All
8 right. Well then, moving on, I would be in support of this
9 application myself. Anybody else want to weigh in on that?

10 (No audible response.)

11 CHAIRPERSON JORDAN: Okay. Then I would move that we
12 grant the relief on 18846.

13 MR. HINKLE: Second.

14 CHAIRPERSON JORDAN: Motion made and seconded.

15 All those in favor of the motion, signify by saying
16 Aye.

17 (Chorus of "Aye.")

18 CHAIRPERSON JORDAN: Those opposed, Nay.

19 (No audible response.)

20 CHAIRPERSON JORDAN: The motion carries.

21 Mr. Moy?

22 MR. MOY: Staff would record the vote as four to zero
23 on the motion of Chairman Jordan to approve the application for
24 the special exception relief under Section 223. Seconding the
25 motion, Mr. Hinkle; also in support, Mr. Peter May and Ms.

1 Marnique Heath. The motion carries four to zero.

2 (The motion to approve the application for the
3 special exception relief under Section 223 for case number
4 18846 passed.)

5 CHAIRPERSON JORDAN: Then we'll call the next one,
6 please.

7 Application No. 18831

8 MR. MOY: Yeah. The second case on the expedited
9 review calendar is application number 18831 of Kira Vol.

10 CHAIRPERSON JORDAN: We have an informal matter to
11 accept the late filing of the affidavit of posting, which I
12 think is sufficient. So we will accept that.

13 Is the board ready to deliberate on the merits of
14 this case? I think that, especially since it's been cleaned up
15 now and that I could support the requested relief, in my
16 thought. Any other discussion on this one?

17 (No audible response.)

18 CHAIRPERSON JORDAN: Then I would move that we grant
19 the requested relief in 18831.

20 MS. HEATH: Second.

21 CHAIRPERSON JORDAN: Motion made and second.

22 All those in favor, Aye?

23 (Chorus of "Aye.")

24 CHAIRPERSON JORDAN: Those opposed, Nay?

25 (No audible response.)

1 CHAIRPERSON JORDAN: Mr. Moy?

2 MR. MOY: Staff would record the vote as four to
3 zero. It is on a motion of Chairman Jordan to approve the
4 special exception relief requested. Seconding the motion, Ms.
5 Heath; also in support, Mr. Peter May and Mr. Hinkle. Motion
6 carries, sir.

7 (Motion to approve the special exception relief
8 requested in case number 18831 passed.)

9 CHAIRPERSON JORDAN: All right. Summary, please?

10 MR. MOY: Summary on?

11 CHAIRPERSON JORDAN: Summary on that one and on the
12 first one, too.

13 MR. MOY: Thank you, sir.

14 Application No. 17109

15 CHAIRPERSON JORDAN: Now for the one that we've seen,
16 oh, what, two-three times? That's 17109. The case has been
17 around since 2004. It's been back and forth to the court of
18 appeals, and it's back to us on remand.

19 Do you want to call that, Mr. Moy?

20 MR. MOY: Okay. Well, I thought you had called it,
21 which would have been fine.

22 This would be the remand of appeal number 17109 of
23 the Kalorama Citizens Association. And it's on second remand
24 to the board. I'll just leave it at that, Mr. Chairman.

25 (Laughter.)

1 CHAIRPERSON JORDAN: Okay. All right. I don't even
2 know how we start this one out. I mean, this is one where
3 we're being asked to review the decision of the board that was
4 made back in 2004, and again several times, and fine-tune
5 whether or not the collar ties are part of the roof on the
6 property. Not only are they structural, but are they part of
7 the roof structure? Is that correct? Roof framing? Would
8 that be the proper way of framing that?

9 MR. RITTING: The correct language from the court of
10 appeals was, they remanded the case to the board, quote, "on
11 the issue of whether the sixth level of 1819 Belmont Road,
12 Northwest, falls within the dictionary definition of an attic."
13 And the key definition is part C, "the part of a building
14 immediately below the roof and wholly or partly within the roof
15 framing."

16 It goes on to say, "a garret or storage space under
17 the roof." So that the issue that you're to decide is whether
18 the collar ties are part of the -- or because of the shape of
19 the attic and the fact that the collar ties form the virtual
20 ceiling, it's not an actual solid ceiling, but whether those
21 collar ties are hardly -- or constitute part of the roof
22 framing.

23 CHAIRPERSON JORDAN: And looking at the architectural
24 plans, there are several gyrations. And the not-so-good copy,
25 I would support the fact that, to me, the collar ties were

1 structural and that they do provide part of the roof framing in
2 the sense that they are providing support and have a real
3 function in regards to helping to prevent the movement of the
4 roof structure.

5 But I'm going to defer off to, certainly, others on
6 the board. Yes.

7 MR. MAY: So, having reviewed this extensive record,
8 and looking back at the various testimony that we received and
9 the arguments that were made and so on, you know, there are
10 many things about this that are, I think, generally troubling.
11 You know, I think that this is -- the notion that this is a
12 level above the fifth level would be construed as an attic, I
13 think it does technically fit for reasons that I will explain.

14 But there seems very little doubt in my mind that
15 this was intended to be interior, occupiable space based on all
16 of the various testimony that was made. I mean, you know, that
17 many outlets. There's no other reason for that space to be
18 there. The notion that you would create this storage space
19 just seemed absolutely silly to me.

20 And then, you know, we can get into the various
21 architects' versions of what's going on here. The description
22 of these as collar ties is incorrect from a technical
23 perspective, from my view, because the way they were described,
24 the way they act, they're not acting in tension. And that's
25 what collar ties do. They hold the framing of the roof

1 together. So to say that somehow it's part of a bracing system
2 for racking against north-south movement, I mean it doesn't
3 make any sense to me based on what we have in the record.

4 However, I think the thing that carries the day,
5 ultimately, is that the architect who is responsible for
6 designing this building so that it stands up stated clearly on
7 the record that it was necessary structurally and that it's
8 part of the framing, it's part of the structure, it's part of
9 what makes the roof, these collar ties, it's what makes the
10 building stand up.

11 So I think, failing that, failing any information to
12 the contrary, or without having an actual structural diagram or
13 more detailed drawings, I think we have to rely on that
14 testimony. And that's, you know, what it all backs down to,
15 for me. In terms of the dictionary definition, is this part of
16 the building immediately below the roof? Yes. It is. It's
17 immediately below the roof. There's no other space between it
18 and the roof.

19 And is it wholly or partially within the framing?
20 Well, we had some seemingly contradictory testimony about that,
21 that the roof, the ceiling is established by the bottom of the
22 so-called collar ties at six-feet-five, and that establishes
23 the ceiling height. And then, presumably, there is some higher
24 space in between these. And these ties are spaced at four feet
25 on center.

1 So if they're four feet on center, they are not
2 adequate framing to support a ceiling. So I assume that if
3 there's actually a finished ceiling in that space, and I assume
4 that there is, that it's actually between the collar ties at
5 four feet.

6 Now, maybe the collar ties themselves are also
7 encased in something that's a better finish material than just
8 two-by-twelves or two-by-tens. But it doesn't really matter.
9 I think that it's arguable -- I think that, based on the
10 information that we have in the record, we can reasonably
11 conclude that when this was built, that there was space. Part
12 of the space was wholly or partly -- well, partly within the
13 framing, not wholly, but partly within the framing. So I think
14 it fits the dictionary definition on that part as well.

15 So, I have to conclude that this is an attic and that
16 the collar ties are structural, they're part of the roof
17 framing, and that the space of this attic is partly within the
18 framing.

19 CHAIRPERSON JORDAN: Great. Anyone else want to
20 weigh in on it?

21 (No audible response.)

22 CHAIRPERSON JORDAN: With that, I would move -- what
23 action do we need to take? I move that we agree with Peter
24 May's explanation and that we find that this is within the
25 attic. I think that would be proper.

1 MR. RITTING: Yeah, that does seem appropriate. I
2 mean, the next step is that the board is going to issue an
3 order that addresses the issues that were identified by the
4 court of appeals on remand. And it seems that you've
5 articulated a position and that we vote on it. That gives me
6 the information I need.

7 CHAIRPERSON JORDAN: So the proper motion would be
8 that the board adopt the discussion and the rationale.

9 MR. MAY: Do you want me to actually restate it as a
10 motion?

11 CHAIRPERSON JORDAN: I don't know if we need to.

12 MR. MAY: Okay.

13 CHAIRPERSON JORDAN: I think we've already -- are you
14 good?

15 (Pause.)

16 MR. RITTING: I'm sorry. Has the board actually
17 taken a vote?

18 CHAIRPERSON JORDAN: No. I said my motion is that we
19 adopt the opinion and that the board adopt the finding in
20 accordance with what Mr. May said, that this was part of the
21 attic.

22 MR. RITTING: I think that's appropriate, but there
23 does need to be a vote of the board.

24 MR. MAY: Okay.

25 CHAIRPERSON JORDAN: Yeah, we know that. That's like

1 Basic Board 101. We're good there.

2 MR. RITTING: I don't come down here very often.

3 (Laughter.)

4 CHAIRPERSON JORDAN: So, looking for a second. I
5 need a second.

6 MR. MAY: Second.

7 CHAIRPERSON JORDAN: Motion made and second.

8 All those in favor, Aye?

9 (Chorus of "Aye.")

10 CHAIRPERSON JORDAN: Those opposed, Nay?

11 (No audible response.)

12 CHAIRPERSON JORDAN: Motion carried.

13 Mr. Moy?

14 MR. MOY: Yes. The staff would record the vote as
15 four to zero. It is on the motion made by the Chairman, also
16 seconding, Mr. Peter May, also in support, Ms. Heath and Mr.
17 Hinkle. The motion carries.

18 (Motion to accept that the collar ties are part of
19 the attic in case number 17109 passed.)

20 CHAIRPERSON JORDAN: Thank you.

21 Application No. 18873

22 CHAIRPERSON JORDAN: Let's then try to move some of
23 these other, easier cases if we can. Let's do 18873. I think
24 that's one of the easier ones, 18873. The parties -- Mr. Moy,
25 do you want to call them? That's the last one on the docket.

1 MR. MOY: Yes, sir, I see.

2 All right. Next before the board is application
3 number 18873. This is an application of Deidra M. Barksdale.

4 Mr. Chairman, this is an application requesting
5 variance from lot occupancy and nonconforming structure, as
6 well as special exception from carport location requirements
7 under subsection 2300.A.

8 CHAIRPERSON JORDAN: Thank you.

9 Please identify yourself.

10 MS. BARKSDALE: Good morning, board. My name is
11 Deidra Barksdale.

12 CHAIRPERSON JORDAN: Very good. Ms. Barksdale, I
13 think the application, and especially with the support of the
14 Office of Planning and all the letters of support you have from
15 your neighbors and what's been particularly explained in this,
16 and the ANC 5E in support, I think, in my opinion, that there's
17 already enough in the record to grant relief.

18 I don't know if the board has anything they need to
19 drill down on.

20 (No audible response.)

21 CHAIRPERSON JORDAN: No? Then we normally have the
22 opportunity for you to present testimony to the board. But
23 it's up to you to decide that, or we can continue on in the
24 process. You can waive your statement. If there's something
25 you can clean up, you can do it at the end. Or you can just

1 jump out there like some people do and say the wrong things and
2 get themselves in trouble.

3 (Laughter.)

4 MS. BARKSDALE: I just -- I rest on the record.

5 CHAIRPERSON JORDAN: Okay. All right.

6 (Laughter.)

7 CHAIRPERSON JORDAN: Then we'll turn to our Office of
8 Planning.

9 MS. BROWN-ROBERTS: Good morning, Mr. Chairman, and
10 members of the board. Maxine Brown-Roberts from the Office of
11 Planning. And I too will stand on the record. Thank you.

12 CHAIRPERSON JORDAN: All right. Very good.

13 Any questions for the Office of Planning, anyone?

14 (No audible response.)

15 CHAIRPERSON JORDAN: Is there anyone here for the
16 Department of Planning on this case?

17 (No audible response.)

18 CHAIRPERSON JORDAN: Do we have a letter from --
19 yeah, we do have a letter from the Department of
20 Transportation, with no objection to the relief requested.

21 Anyone here from ANC 5E, is it?

22 MS. BARKSDALE: Yes.

23 CHAIRPERSON JORDAN: ANC 5E?

24 (No audible response.)

25 CHAIRPERSON JORDAN: We do have a letter of support

1 in ANC 5E. The vote is six to zero in support of this
2 application.

3 Is anyone here wishing to speak in support of this
4 application?

5 (No audible response.)

6 CHAIRPERSON JORDAN: Anyone wishing to speak in
7 support? We do have -- probably everybody on your block. We
8 have 12 letters of support for this. And we really appreciate
9 you getting that from neighbors. It means a lot to us.

10 Anyone here wishing to speak in opposition? Anyone
11 in opposition?

12 (No audible response.)

13 CHAIRPERSON JORDAN: Then we would turn back to the
14 Applicant, where we normally have rebuttal and closing. But
15 there's nothing to rebut, and there's nothing to close. So
16 we'll close the record on this case.

17 And I would move that we grant the relief requested
18 in 18873.

19 MS. HEATH: Second.

20 CHAIRPERSON JORDAN: Motion made and second.

21 All those in favor of the motion, Aye?

22 (Chorus of "Aye.")

23 CHAIRPERSON JORDAN: Opposed, Nay?

24 (No audible response.)

25 CHAIRPERSON JORDAN: Mr. Moy?

1 MR. MOY: Staff would record the vote as four to
2 zero. This on the motion of Chairman Jordan to approve the
3 application for the relief requested. Seconding the motion is
4 Ms. Heath; also in support, Mr. May, Mr. Hinkle, and we have a
5 member not present today. Motion carried.

6 (Motion to grant the relief requested in case number
7 18873 passed.)

8 CHAIRPERSON JORDAN: Thank you.
9 Summary order, please?

10 MR. MOY: Yes, sir.

11 CHAIRPERSON JORDAN: Thank you very much. Appreciate
12 it.

13 MS. BARKSDALE: Thank you so much. I really
14 appreciate it.

15 Application No. 18845

16 CHAIRPERSON JORDAN: Let's try 18845, 18845. Okay.
17 Let's do 18845.

18 MR. MOY: Thank you, sir. That would be parties to
19 the table to application number 18845 of Latham Owner, SPE LLC.
20 As advertised for notice, it's requesting variance relief from
21 the rear yard parking and loading requirements and special
22 exception to locate, as captioned, 20 parking spaces. And this
23 would be under subsection 2116.5.

24 Please identify yourselves, please.

25 MR. AVITABILE: David Avitable, land use counsel with

 OLENDER REPORTING, INC.
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Washington: (202) 898-1108 / Baltimore: (410) 752-3376
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1 Goulston and Storrs, land use counsel for the applicant.

2 MS. RICKS: Karina Ricks with Nelson Nyegood
3 Associates, transportation consultant for the applicant.

4 MR. BALABAN: Mike Balaban, SB Urban, the applicant.

5 MR. BARANES: Shalom Baranes, architect for the
6 project.

7 MR. SAUL: And Frank Saul, SB Urban, the applicant.

8 CHAIRPERSON JORDAN: Is there anything that the board
9 needs to hear from this applicant? Do they want to drill down
10 on this one? I think -- Mr. May, please.

11 MR. MAY: Yeah. Just the necessity -- I guess we
12 ought to just, if you could walk me through the need to
13 eliminate the parking ramp. I mean, that seems to be what's
14 driving -- it's all about being able to make use of the lower
15 floors of the building. And, you know, did you look at any
16 other ways to try to accommodate parking within the structure
17 and what necessitates taking it out?

18 You could have put the amenity spaces somewhere else,
19 conceivably. Just walk me through why this is really the only
20 solution.

21 (Pause.)

22 MR. BARANES: I'm going to start just by showing you
23 some of the existing layout of the building. It might be
24 helpful to --

25 CHAIRPERSON JORDAN: Mr. Moy, may we have the lights?

1 MR. BARANES: The lights.

2 The property consists of two buildings. On the upper
3 right-hand side you see the two-story building that faces M
4 Street and is on the corner of M and 30th. And the gray you
5 see behind it is an existing driveway that enters on M Street,
6 where you see the arrow on the left, comes down, takes a right,
7 and then exits on 30th Street. It does not go down to the
8 garage.

9 And then that separates the front building from the
10 rear building, which is a tower. And on the lower right-hand
11 side of the slide, you see the existing loading dock, which is
12 right here, and the ramp, which is here. And that ramp enters
13 on 30th, and then basically, in a clockwise motion, wraps all
14 the way around the building to get down several levels to where
15 the parking is at the very, very bottom of this structure.

16 So it actually moves through three separate levels in
17 order to access the parking at the base. It's an
18 exceptionally, exceedingly long ramp.

19 Let's see. On the lower left, you see a photograph
20 of the ramp off of 30th Street. And here's another picture of
21 it. All right. I'm going to go to the end of the slides now.
22 Actually, let me just show you on the section here. This is
23 important, I think, to understand. In this section, we have M
24 Street on the upper right here. You can see it's high.

25 And then if you can follow this dotted line, which

1 goes all the way down to here on 30th Street, which is where
2 the ramp enters, that ramp, so enters a level below M Street
3 and then winds itself all the way down, as I said, clockwise
4 around the entire property down to this lowest level.

5 And the reason we removed it is because of the amount
6 of space that it takes. And by removing that ramp, we were
7 able to accomplish two things. One is capture all of that
8 space for amenities, other uses. But the other thing we were
9 able to do was introduce -- it gives the ability to introduce
10 natural light into the back of the building where we do have
11 most of the amenity spaces.

12 And I think I can show you that a little more
13 clearly, perhaps, right here.

14 (Pause.)

15 MR. BARANES: I'll have to describe it here because
16 it's not real clear. But in the drawing on the right, the ramp
17 occupies most of that area below the dotted black line coming
18 in off of 30th and then winding itself back up to the north.
19 We captured all of that space for amenity space.

20 And I can show you that here. On the upper left, you
21 see the ramp coming down, the existing ramp. On the upper
22 right, you see it has a blank wall facing the National Park
23 Service property to the south. And on the lower right, you can
24 see how we are removing the brick. We're proposing to remove
25 the brick off of that wall and introduce a whole series of

1 windows facing the National Park Service property.

2 And then we are using that area to introduce -- as I
3 say, not only to place amenities there, but also to capture
4 natural light, which both penetrates into that level of the
5 amenity space, plus enters the space below. We have cut out
6 the slab there so we can get natural light into the area below
7 the grass plain. And on the lower left, you start to get a
8 sense for how we are occupying that space where the ramp is.

9 Is that sufficient to explain it?

10 MR. MAY: So I guess what I'm curious about is
11 whether you looked at any other solution that would have left
12 the ramp in place and, you know, put the amenity space
13 somewhere else and still achieve your goals? I mean, what
14 alternatives did you look at?

15 MR. BARANES: Well, we looked at -- I mean, we looked
16 at two other alternatives. One was, as you suggest, to leave
17 it in place. And of course, the issue with there is that it
18 wound up eating up an enormous amount of space.

19 MR. MAY: So I mean, you wouldn't get any usable
20 units on the lower floors as a result? Or --

21 MR. BARANES: We were able to squeeze a few in, but
22 not very many at all. And we were losing most of the amenity
23 space.

24 MR. MAY: Right.

25 MR. BARANES: The other option we looked at was

1 taking the driveway that you see coming in off of M Street, and
2 you saw how it hooks to the right there. We looked at taking
3 that straight down and then winding it around counterclockwise,
4 opposite direction.

5 MR. MAY: Right.

6 MR. BARANES: But quite honestly, that turned out to
7 be worse because you're entering at a higher level and then
8 trying to get a lowest level.

9 MR. MAY: Right.

10 MR. BARANES: So those are the two primary reasons we
11 did that.

12 MR. MAY: Well, that's enough for me on that one.

13 I have a couple of other questions, but should I go
14 with those?

15 CHAIRPERSON JORDAN: Let me see if the board, anybody
16 else have questions regarding the ramp?

17 (No audible response.)

18 CHAIRPERSON JORDAN: Okay. Please, Mr. May.

19 MR. MAY: So I got a little confused on, exactly how
20 many parking spaces are going to be provided offsite?

21 MR. AVITABLE: It's 42 spaces.

22 MR. MAY: It is 42?

23 MR. AVITABLE: Yes.

24 MR. MAY: Okay.

25 MR. AVITABLE: That was the product of our

1 negotiations and discussions with CAG and the ANC.

2 MR. MAY: Okay. And then, at one point I saw a
3 number of 20, and I was operating under 20 for a little while.
4 But I saw it as 42 also.

5 And then the last thing is, have you had contact with
6 National Park Service about, and tried to coordinate anything
7 having to do with, the construction immediately adjacent? Or
8 have they contacted you about it?

9 MR. BALABAN: They have not contacted us. And we
10 have discussed the project in conceptual terms with members of
11 the Park Service really in conjunction with discussions with
12 the bid about the plans for the canal and the park related to
13 it. But we have not had any discussions that one would
14 characterize as negotiations.

15 MR. MAY: I'm not suggesting there would be
16 negotiations per se. But I imagine you're going to need to
17 touch their land, touch our land, in order to get this built,
18 right? I mean, are you going to be able to just -- I mean, it
19 looks like you're completely redoing that wall that abuts the
20 park land. You're going to do that completely from your
21 property, or are you going to actually going to have to come
22 onto Park Service land to do it?

23 MR. BALABAN: We could do it from within our
24 property, and we would expect to seek cooperation, but we have
25 not done that at this time.

1 MR. MAY: Okay. Well, it's a little disappointing
2 there hasn't already been contact with the Park Service since
3 you're, you know, an abutting neighbor.

4 MR. AVITABLE: Well, to be clear, there has been
5 contact with the Park Service. There was a meeting six months
6 ago at the Georgetown bid with a representative of the Park
7 Service.

8 Do you all remember the name of the gentleman we
9 spoke with?

10 (No audible response.)

11 MR. AVITABLE: But we spoke with someone from the
12 Park Service, whoever is generally responsible for the canal.
13 But we had someone there.

14 MR. MAY: Was it the superintendent, Kevin Brandt?

15 (Chorus of "It was.")

16 MR. AVITABLE: That's who it was, Kevin Brandt.

17 MR. MAY: All right. Well, that's reassuring. All
18 right. Thank you.

19 CHAIRPERSON JORDAN: All right. Thank you.

20 Let me go through some of these conditions that I'm
21 concerned about. The covenant -- well, condition particularly,
22 is it number 2C. And all these conditions that would apply to
23 the tenants.

24 We can have the lights back on, please, Mr. Moy.

25 (Pause.)

1 CHAIRPERSON JORDAN: There's a lot here about
2 tenants. And for instance, it gives me concern, the
3 enforceability of "Each tenant will be prohibited from parking
4 overnight on any street within Georgetown whether or not street
5 parking is otherwise permitted." You know, all this stuff
6 sounds good; how are you going to enforce this?

7 MR. AVITABLE: Well, I think we've gone through in
8 detail a system where we're going to make sure our tenants know
9 from the beginning before they even sign a lease what the rules
10 are. And we do fully expect that few to no tenants will own a
11 car. But they'll understand that, at the outset, if they do
12 want to bring a car, they're not allowed to park it on the
13 street. They'll have to sign something to that effect. We'll
14 certainly keep our eyes open.

15 CHAIRPERSON JORDAN: What do you mean "they'll sign
16 something to that effect"? Is this going to be part of the
17 lease? All these provisions, which are boxing in the tenant
18 and providing all this notice to the tenant, they're
19 restricting the tenants' ability with their automobiles. Is
20 that going to be part of the lease?

21 MR. AVITABLE: Yes. Condition 2D says that. Each of
22 the above parking restrictions will be prominently featured in
23 each residential lease as a rider that is separately initialed
24 by each residential tenant. Any violation of the above parking
25 restrictions is treated as an automatic default under the lease

1 and provides ground for termination of the lease. And we'll
2 use prompt and reasonable efforts to terminate it.

3 CHAIRPERSON JORDAN: And how is it going to be
4 enforced?

5 MR. AVITABLE: Well, I think -- so you've got a
6 number of mechanisms. One, again, we'll be aware of what our
7 tenants are doing. If we become aware of a tenant that's
8 parking in the neighborhood, we'll take action. And certainly,
9 if one of our residential neighbors noted that someone was
10 parking and brought it to our attention, we would do that as
11 well.

12 I'm not suggesting that we're asking the community to
13 self-police here. But I think the fact that we and the
14 Citizens Association of Georgetown jointly agreed that this was
15 sufficient should provide some comfort that at least the
16 parties on the ground feel this is workable.

17 CHAIRPERSON JORDAN: Okay.

18 Board, any other questions for the applicant?

19 (No audible response.)

20 CHAIRPERSON JORDAN: Is there anything that you think
21 you need to say to the board other than what we've already
22 questioned you about?

23 MR. AVITABLE: I think the only thing I did want to
24 address, there were three comments in the DDOT report. I just
25 wanted to briefly address them so that we'd have everything

1 covered.

2 The first comment was that DDOT asked we remove any
3 reference to curbside management from the TDM plan. We don't
4 have a reference to curbside management. And our TDM plan is
5 encapsulated in the conditions, so we've addressed that.

6 And then the second was that they asked us to offer
7 Capital Bikeshare memberships to all residents than rather only
8 tenants that don't have a bike. We're happy to agree to that.

9 And then finally, DDOT asked that we clarify that the
10 Bikeshare and Carshare memberships will be annual memberships
11 even if the tenant doesn't have a yearlong lease. And we'd
12 also agree to that.

13 In other words, we've agreed to everything DDOT's
14 asked.

15 CHAIRPERSON JORDAN: Okay. Let's go back through
16 that.

17 MR. AVITABLE: Sure.

18 CHAIRPERSON JORDAN: What was the one where -- let's
19 go through the first one. The ramp, I'm good on the ramp.
20 Let's go to the second.

21 MR. AVITABLE: Okay. So the second comment was that
22 DDOT asked that we offer our Capital Bikeshare memberships to
23 all of our residents, rather than simply residents who don't
24 otherwise have a bicycle. Our idea was if you had a personal
25 bicycle, why do you need a Capital Bikeshare membership?

1 They've asked us to extend it to all residents. We've agreed
2 to do that. So even though half of our residents could very
3 well have a bike, we'll give them a Capital Bikeshare
4 membership as well.

5 MR. MAY: I have a bike and a Bikeshare.

6 MR. AVITABLE: Well, there we go. That helps support
7 why we agreed that that was right.

8 MR. MAY: I can't use it at the moment because of my
9 leg.

10 (Laughter.)

11 MR. AVITABLE: Understood.

12 And then the other comment was that, you know, we're
13 going to have some tenants that may sign a lease for shorter
14 than a year. And DDOT wanted to make sure that we promise to
15 give every tenant a Bikeshare membership and a Carshare
16 membership. DDOT wanted us to make sure we were providing an
17 annual membership rather than, let's say, a monthly or another,
18 shorter term.

19 And we've agreed that the membership will be a
20 yearlong membership regardless of whether the tenant is in the
21 building for six or nine months. So it's just clarifying that
22 it will be an annual membership because both of those bodies --

23 CHAIRPERSON JORDAN: So these are annual memberships
24 and not just upon the initial term.

25 MR. AVITABLE: No. It will be an annual membership.

1 It will be a single membership for one year for each resident.

2 CHAIRPERSON JORDAN: Each new resident?

3 MR. AVITABLE: That's correct. And we'll do that for
4 the life of the project.

5 CHAIRPERSON JORDAN: Um-hm. Okay.

6 All right. Board, any other questions we have of
7 this applicant?

8 (No audible response.)

9 CHAIRPERSON JORDAN: Then let's go to the Office of
10 Planning. If there's anything additional that you would like
11 to add at this time.

12 MS. THOMAS: Good morning, Mr. Chairman, members of
13 the board. The Office of Planning will stand on the record of
14 its report. We will not have anything else to add. Thank you.

15 CHAIRPERSON JORDAN: Okay. Anyone here from the
16 Department of Transportation, on this case? Anyone here from
17 the Department of Transportation?

18 (No audible response.)

19 MR. MOY: There's a representative.

20 MR. WESTROM: I'm here, but I'm not on this case. Do
21 you still want me?

22 CHAIRPERSON JORDAN: No, not unless you're on this
23 case. If you want to -- glad to see you. Thanks for coming.

24 (Laughter.)

25 CHAIRPERSON JORDAN: We miss you guys.

1 Do we have a letter from DDOT?

2 MR. AVITABLE: Yes, you do.

3 CHAIRPERSON JORDAN: Okay. There's no objection?
4 Support the conditions that we've already -- okay, good.

5 Is anyone here from ANC 2E? Anyone here from ANC 2E?
6 We do have a letter of support, a unanimous letter of support
7 from ANC 2E supporting this project.

8 Is anyone here wishing to speak in support of this
9 application? Anyone wishing to speak in support, please come
10 forward. And give us your name, please.

11 (Pause.)

12 MR. HINDS: Good morning. I am Richard Hines, legal
13 counsel to the Citizens Association of Georgetown. And we are
14 very pleased to be here to support this project at 3000 M
15 Street. We find that upon reviewing the project as a whole,
16 that it would help support the image of Georgetown as a
17 vibrant, accessible location for young professionals and other
18 people needing short-term furnished housing.

19 We also think it's very important to Georgetown's
20 commercial viability to have the new retail that is being
21 proposed and potentially a restaurant, we hope. So we see a
22 lot of pluses to this project for Georgetown.

23 And the ability of these residents to also frequent
24 the other shops and the businesses in Georgetown, providing,
25 you know, 140 potential tenants who would be, I think,

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1 desirable customers for the commercial corridor in Georgetown.
2 So a lot of pluses.

3 Now, we did have some concerns about the project. We
4 had concerns about the lack of parking that was being proposed.
5 Initially, it was no parking. And then it was 20 parking
6 spaces in an adjoining garage. We do accept the argument that
7 you have heard that it's very important for this project to
8 have the parking elsewhere, but we did not accept the argument
9 that there was no need for parking or that 20 spaces would be
10 sufficient.

11 We have, in addition to 140 tenants, at least some of
12 whom may want to have a car or at least want to rent a car
13 occasionally, we have a need for parking for visitors of those
14 residents, contractors coming to the building, customers of the
15 retail establishments that we hope will be there, and entice
16 people to drive to Georgetown.

17 And Georgetown does not have metro. Parking is very
18 important in Georgetown and will remain so until such time as
19 we get either metro or the streetcar or something else. But
20 right now, we have a bus system that is constantly being scaled
21 back, over our protests. So we don't really have great
22 transportation. So parking remains an issue in Georgetown.

23 And parking spaces are an issue in Georgetown. And
24 this is a real, you know, concern about the neighbors of this
25 project, that they would be being squeezed out by the tenants

1 if no parking was provided.

2 So we negotiated a 42-space agreement with the
3 developer, Mr. Balaban. And we feel that that is an adequate
4 number. It would be actually nice to have more, but we think
5 that that's an adequate number of spaces to deal with what we
6 think is the projected needs.

7 We also are concerned about the lack of truck
8 parking, delivery truck parking on this narrow street. One big
9 truck double-parked could block the street and block access to
10 the neighbors on this street. So we asked for, and the
11 developer, Mr. Balaban, agreed to provide an additional truck
12 bay. To provide that additional truck bay, he needs to get
13 approval for an additional curb cut, or actually an extension
14 of the existing curb cut that you saw on the slide earlier.

15 And we hope that that will go forward without any
16 problems, because we think there is a real problem with having
17 only one truck delivery bay with a project of this size, with
18 that many tenants, some of whom are going to be moving in and
19 moving out on a short-term basis. They're not all going to be
20 there for a year. Most will probably be there for less than a
21 year.

22 So we just think that it's really important to have
23 that additional space. So we hope that there's no problem in
24 getting that accomplished. The developer has agreed to it.
25 All we need now is DDOT approval, as I understand it.

1 As a result of an agreement -- and I won't go into
2 any more detail, but there are a lot of other issues relating
3 to noise and other things that we were successful in getting
4 the developer to agree to mitigate. And following these
5 negotiations, which were memorialized in a four-page agreement,
6 we agreed to support the application.

7 Based on that agreement, ANC 2E met and also supports
8 the application. So the community is behind this project.

9 CHAIRPERSON JORDAN: Very good. Thank you.

10 MR. HINDS: And we therefore urge that it be approved
11 subject to the conditions that we have negotiated with the
12 developer.

13 CHAIRPERSON JORDAN: Great. Thank you.

14 Is there anyone else wishing to speak in support?

15 (No audible response.)

16 CHAIRPERSON JORDAN: Anyone wishing to speak in
17 opposition? Anyone in opposition?

18 (No audible response.)

19 CHAIRPERSON JORDAN: Then we would normally move back
20 to the applicant for any rebuttal or closing. But I think we
21 don't need to do that. Would you agree?

22 MR. AVITABLE: I always agree.

23 (Laughter.)

24 CHAIRPERSON JORDAN: Okay. We'll accept that. And
25 then close the record based upon what we have before us as

1 deduced in this hearing.

2 I would move that we grant the relief -- excuse me.
3 Any questions or deliberation that the board needs to make?

4 (No audible response.)

5 CHAIRPERSON JORDAN: I would move that we grant the
6 relief requested in 18845 with the conditions as modified.

7 And I'm going to ask you, counselor, to supply the
8 record with the modified version of the conditions, please.

9 And that would be my motion.

10 MS. HEATH: Second.

11 CHAIRPERSON JORDAN: Motion made and second.

12 Any further discussion?

13 All those in favor, Aye.

14 (Chorus of "Aye.")

15 CHAIRPERSON JORDAN: Those opposed, Nay.

16 (No audible response.)

17 CHAIRPERSON JORDAN: The motion carries.

18 Mr. Moy?

19 MR. MOY: Staff would record the vote as four to
20 zero. This is on the motion of Chairman Jordan to approve the
21 application with the conditions as cited by the board, as
22 modified. And also for the record, that the amendment also is
23 for 42 parking space. Seconding the motion, Ms. Heath; also
24 support Mr. May and Mr. Hinkle.

25 CHAIRPERSON JORDAN: Very good. Then summary order,

1 please.

2 MR. MOY: Yes, sir.

3 (Motion to approve the application, with cited
4 modified conditions, for case number 18845 passed.)

5 CHAIRPERSON JORDAN: Thank you all. Appreciate it.

6 And we're going to stand down for five minutes. Is
7 five minutes good? Five minutes, please.

8 (Whereupon, at 10:51 a.m., a recess was taken, to
9 resume at 10:59 a.m.)

10 Application No. 18839

11 CHAIRPERSON JORDAN: What's next here, gang? Did we
12 do 839? 839 looks okay? It's not like I don't like being
13 around you guys, but -- okay. So, let's call 839, Mr. Moy.

14 MR. MOY: Yes. Application number 18839, of 47th
15 Avenue, LLC. Mr. Chairman, this application is requesting --
16 or rather, the applicant is requesting relief, variance relief
17 from the off-street parking requirements under 2101.1. That is
18 the relief that was advertised.

19 CHAIRPERSON JORDAN: Okay. Very good.

20 Please introduce yourselves, please.

21 MS. BROWN: Good morning, Mr. Chairman and members of
22 the board. I am Carolyn Brown with the law firm of Holland and
23 Knight. I'm with my colleague Jessica Bloomfield. Also in the
24 audience are representatives of the owner, Frank and Dina
25 Economides. And to my right is Rich Foster of Richard Foster

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1 Architects, and Erwin Andres of Grove Slade Associates, not
2 architects.

3 CHAIRPERSON JORDAN: Okay. I think the only issues I
4 had on this was on the conditions. But I don't know if other
5 members of the board have other questions they would like to
6 ask about this project.

7 Mr. May?

8 MR. MAY: The DDOT loading.

9 CHAIRPERSON JORDAN: Yeah.

10 MR. MAY: DDOT has an issue with loading.

11 CHAIRPERSON JORDAN: And that's part of the issues I
12 have on the conditions, too.

13 Okay. So we need to drill down on that. And I think
14 otherwise we're okay.

15 MS. BROWN: Perfect. Thank you. As you might
16 imagine, we were both pleased and disappointed with DDOT's
17 report. Pleased with their support for the elimination of the
18 required, and disappointed with the determination that there
19 were adverse effects regarding loading and recommendations to
20 redesign the building.

21 However, I am very happy to report that we had an
22 extremely productive telephone call with DDOT yesterday
23 afternoon to address these issues.

24 First, we clarified that the private alley that is
25 behind this property, which is eight feet wide, extends along

1 the back of this property and then shifts westward and exits
2 out onto 42nd street so that a truck that does provide any
3 loading at the back of the building can pull straight across
4 the sidewalk and exit onto 42nd Street without having to back
5 into -- back over any sidewalks.

6 And just as a reminder, of course, there is no
7 loading requirement for this building. We have fewer than 50
8 residential units, and we have less than 55,000 square feet of
9 retail space. We have no loading requirements. So legally, we
10 don't have to do anything with loading. But as a practical
11 matter, we wanted to solve DDOT's issue. So that's one thing
12 that we clarified for them.

13 Secondly, currently, the tenant Steak and Egg loads
14 from Wisconsin Avenue at the front of the building after
15 midnight, as well as Papa John's to the south. They do the
16 same thing. So that's also another alternative for addressing
17 loading issues.

18 A third one that we discussed was along Chesapeake
19 Street, where there is the extensive curb cut right now that
20 that is going to be restored to a curb. And we suggested that
21 perhaps it would be daytime loading hours. And then at 6:30,
22 it would return to on-street parking. But DDOT suggested that
23 the street was too narrow at that point to allow that. But I
24 believe we have the other two solutions that solve that issue.

25 We also agreed that the additional TDM measures, the

1 Bikeshare and Carshare memberships for residents, are not
2 necessary since the eight spaces that we are providing in the
3 building satisfy the residential requirements, so there's no
4 nexus to supply those additional TDM measures.

5 We agree to provide the 10 bike spaces. Right now,
6 we have eight bike racks, or bike racks to accommodate eight
7 bicycles, in public space. We would add another one that could
8 accommodate another two bikes so that we agree with that
9 recommendation on DDOT.

10 One other thing that I would like to mention is that
11 we would like to request some flexibility in the parking
12 layout. We have a slide today that we can show you of an
13 alternative layout that I think is probably more efficient.
14 We're still finalizing the column layout. And we would suggest
15 that we -- we would ask for the additional relief to rearrange
16 the spaces and the option to provide all of them as compact,
17 but without having to request any additional relief.

18 And then I'm ready to discuss conditions when you're
19 ready.

20 CHAIRPERSON JORDAN: But those parking changes would
21 not be a need for additional relief; is that what I understand?

22 MS. BROWN: Correct. But we would still provide the
23 eight spaces. We just might rearrange them and find a more
24 efficient way to lay them out.

25 CHAIRPERSON JORDAN: All right. For any additional

1 questions?

2 (No audible response.)

3 CHAIRPERSON JORDAN: Regarding the memorandum of
4 understanding which we've been asked to adopt, there's
5 provisions here that are just simply not zoning related.

6 MS. BROWN: I agree, and I think it's one of the
7 difficulties that, you know, applicants run into trying to
8 negotiate support with an ANC and trying to accommodate their
9 considerations.

10 I've looked at the resolution, and I think that maybe
11 the ANC resolution has provided a solution that might work.
12 And that is number three in the resolution on page 2.

13 CHAIRPERSON JORDAN: Give me one second and let me
14 look.

15 MS. BROWN: Sure.

16 CHAIRPERSON JORDAN: Well, I was simply going to
17 absorb the TDM and the unlawful parking portions of that. But
18 let me look. Yeah, I did look at this resolution. And I think
19 this --

20 (Pause.)

21 CHAIRPERSON JORDAN: So that doesn't say anything
22 different than -- how do you think this is --

23 MS. BROWN: Well, you know, I agree that none of
24 these were -- virtually none of the recommendations have
25 anything to do with the relief requested. However, we wanted

1 to make an accommodation with the ANC and address their
2 concerns.

3 And by way of background, this originally was
4 contemplated as a PUD similar to the Babe's Billiards case.
5 The site was too small as a PUD. So the owner tried to talk to
6 the other property owners within the square to make a larger
7 consolidated site. That didn't work out. So that's why we're
8 back with this BZA case.

9 So the MOU started getting larger than it needed to,
10 and trying to cut elements out was difficult once we started
11 there.

12 CHAIRPERSON JORDAN: But you haven't executed an MOU
13 with an ANC?

14 MS. BROWN: Absolutely. We do. And it's in the
15 record.

16 CHAIRPERSON JORDAN: Okay. Then that's -- the ANC's
17 protected in what they want to do.

18 MS. BROWN: Correct.

19 CHAIRPERSON JORDAN: And we can certainly -- I don't
20 know if it's necessary for us even to adopt. The only ones I
21 thought that were germane were number six and number seven, the
22 transportation management coordinator requirement and the
23 unlawful parking provision of that MOU. But you already --
24 they already have an MOU here. So I think we're probably --
25 they're protected.

1 Board, any other questions of this applicant on this
2 one?

3 (No audible response.)

4 CHAIRPERSON JORDAN: Then let's move to the Office of
5 Planning, please.

6 MS. ELLIOTT: Thank you, Mr. Chairman, members of the
7 board. For the record, I'm Brandice Elliott with the Office of
8 Planning.

9 I would like to offer one modification to OP's
10 report. And that's in regard to the relief that was requested.
11 In the report, we noted that additional relief is required for
12 sections 2115.2 and 2115.4. The applicant actually did request
13 that, so I just wanted to clarify that.

14 But we do continue to be supportive of this
15 application and are recommending approval. I'd be happy to
16 answer any questions you have.

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

19 (No audible response.)

20 CHAIRPERSON JORDAN: Applicant, any questions of the
21 Office of Planning?

22 MS. BROWN: No, sir.

23 CHAIRPERSON JORDAN: Okay. Then, is anyone here from
24 the Department of Transportation who would like to speak on
25 this?

1 MS. ELLIOTT: Mr. Chairman, I would like to take this
2 opportunity to introduce a new DDOT staff person. Ryan Westrom
3 joins us from DDOT.

4 CHAIRPERSON JORDAN: I mean, who are you to get a
5 lead-in with an introduction? Everybody else says, "I'm from
6 DDOT, and my name is so-and-so."

7 (Laughter.)

8 MS. ELLIOTT: We're very excited to have someone from
9 DDOT present today.

10 CHAIRPERSON JORDAN: See? Carry this message back.
11 That's the second time you heard that.

12 MR. WESTROM: That is correct. I appreciate the warm
13 welcome. My name is Ryan Westrom, from DDOT. And it is my
14 pleasure to be here in front of the board. I appreciate
15 Carolyn's opening remarks.

16 And as you noted, the memo position that we took was
17 in support of a variance for the parking at hand. However, we
18 did address the concerns that we have with loading. And as per
19 the conversation yesterday, so the main concern is, of course,
20 that we have a hierarchy of preference in terms of loading
21 requirements.

22 And the understanding that we had at the point in
23 time that we finalized this memo was that the availability of
24 the public alley portion serving this building dead-ended past
25 this building's property, which would necessitate back-end

1 loading unless the loading were accommodated onsite.

2 It is our understanding now that the alley is
3 available for public access through from Chesapeake all the way
4 to 42nd. And furthermore, the applicant would be willing to
5 consider on-street loading that would meet our requirements.
6 And those discussions would happen as part of the public space
7 permitting process.

8 We pointed it out at this point in this juncture, due
9 to the fact that we thought there was potential that the
10 loading requirements that we would see as part of the public
11 space permitting process, although not required by zoning,
12 could affect the variance at hand if the accommodation of it
13 was in the parking space and there were perhaps even fewer
14 parking spaces provided than they currently have.

15 CHAIRPERSON JORDAN: You were just trying to get
16 their attention.

17 (Laughter.)

18 MR. WESTROM: I'll accept that summation of it.

19 (Laughter.)

20 CHAIRPERSON JORDAN: No, no. I'm just joking with
21 you.

22 Anything else?

23 MR. WESTROM: No, that's good.

24 CHAIRPERSON JORDAN: Board, questions?

25 (No audible response.)

1 CHAIRPERSON JORDAN: And thanks again. And please
2 send that signal back to Transportation.

3 Applicant, any questions of the Department of
4 Transportation?

5 MS. BROWN: No, sir.

6 CHAIRPERSON JORDAN: Is anyone here from ANC 3E? ANC
7 3E, who has voted in support and has an executed memorandum of
8 understanding with the applicant?

9 (No audible response.)

10 CHAIRPERSON JORDAN: Is there anyone here wishing to
11 speak in support of the application? Anyone in support?

12 (No audible response.)

13 CHAIRPERSON JORDAN: Anyone in opposition? Anyone in
14 opposition?

15 (No audible response.)

16 CHAIRPERSON JORDAN: Then we would close this hearing
17 based upon the record already. I'm assuming you have no
18 rebuttal, there's no closing. So that's why I'm closing the
19 record. Okay?

20 MS. BROWN: Thank you. Agreed.

21 CHAIRPERSON JORDAN: That we close the record. Is
22 the board ready to deliberate in this case?

23 Any discussion?

24 I would move that we grant the relief requested in
25 18839.

1 MS. HEATH: Second.

2 CHAIRPERSON JORDAN: Motion made and seconded.

3 Further discussion?

4 (No audible response.)

5 CHAIRPERSON JORDAN: All those in favor of the
6 motion, signify by saying Aye.

7 (Chorus of "Aye.")

8 CHAIRPERSON JORDAN: Those opposed, Nay.

9 (No audible response.)

10 CHAIRPERSON JORDAN: The motion carries.

11 Mr. Moy?

12 MR. MOY: The staff will record the vote as four to
13 zero. This is on the motion of Chairman Jordan to approve the
14 application for the relief requested, which also includes
15 2115.2 and 2115.4. Correct?

16 MS. BROWN: Yes. And just a point of clarification
17 that the flexibility for the layout is also included.

18 MR. MOY: Yeah.

19 MS. BROWN: Thank you.

20 CHAIRPERSON JORDAN: As long as it doesn't require
21 additional zoning relief, of course.

22 MS. MUSAFIRI: Thank you.

23 CHAIRPERSON JORDAN: Did you poll already?

24 MR. MOY: Not yet, sir. I wasn't finished with that.

25 And conditions were discussed in this case, sir,

1 correct?

2 CHAIRPERSON JORDAN: We did. They have a standing
3 MOU.

4 MR. MOY: Okay. I just want clarification on that,
5 so we're fine with that.

6 So, seconding the motion is Ms. Heath; also support,
7 Mr. Peter May and Mr. Jeffrey Hinkle; no other board members
8 present. Motion carries.

9 (Motion to approve the application for relief in case
10 number 18839 passed.)

11 CHAIRPERSON JORDAN: Right. And summary order,
12 please?

13 MR. MOY: Yes, sir.

14 CHAIRPERSON JORDAN: All right. Now the fun part.
15 Oh, no, let's do -- I think we're okay. Let me take a look at
16 this. 18844, I think? No. No, no, no, no. That's not it
17 either. Okay.

18 (Pause.)

19 CHAIRPERSON JORDAN: I think everything else is
20 contested. Let's go to the top of the order and follow the
21 regular sequence after this point, Mr. Moy.

22 (Pause.)

23 Application No. 18841

24 MR. MOY: All right. Application number 18841. This
25 is the application of Robert J. Searle. This is an application

1 requesting relief for variance from the nonconforming structure
2 provisions, as well as court requirements. This is relief as
3 advertised.

4 CHAIRPERSON JORDAN: Okay. All right. Please
5 identify yourselves.

6 MS. MOLDENHAUER: Good morning, members of the board.
7 My name is Meridith Moldenhauer from the law firm of Griffin,
8 Murphy, Moldenhauer and Wiggins, here on behalf of the
9 applicant. And with me today, I'll turn to you, Jennifer.

10 MS. FOWLER: I am Jennifer Fowler, Fowler Architects.

11 MR. SEARLE: I'm Robert Searle, the owner of the
12 property.

13 CHAIRPERSON JORDAN: Okay. I might do this in a
14 different way. Maybe it will help facilitate. I don't know
15 what other questions the board has, but I would like to hear
16 from the Office of Planning maybe first, and maybe I think that
17 gives us the opportunity to come back, if that's okay with
18 everyone.

19 And my question, please identify yourself when I get
20 a question for you, Miss.

21 MS. VITALE: Sure. Good morning, Mr. Chair, members
22 of the board. Elisa Vitale with the Office of Planning.

23 CHAIRPERSON JORDAN: The Office of Planning
24 recommends the denial of this, as it affects the -- is it
25 second and third floor? Is that correct?

1 MS. VITALE: It would be a new third-floor addition
2 that would be triggering the variance for relief.

3 CHAIRPERSON JORDAN: Okay. I guess my question, I'll
4 look at my notes, OP does not provide justification for its
5 conclusions. Is there a structural issue between the second
6 and third floors?

7 MS. VITALE: OP was not able to support the requested
8 relief because the applicant didn't provide what we would
9 believe would be sufficient justification with respect to the
10 need for the third floor addition. The applicant could
11 potentially reconstruct the addition on the existing footprint
12 and maintain, you know, two floors without adding the third
13 additional floor.

14 The application didn't state why it was necessary
15 other than just a broad statement regarding structural concerns
16 as to why the additional floor was required. So that's why we
17 felt that the case wasn't made to support the relief requested.

18 CHAIRPERSON JORDAN: But we have a structural issue
19 on the first and second floor, right?

20 MS. VITALE: That was indicated in the application,
21 yes.

22 CHAIRPERSON JORDAN: Right, right. All right. And
23 then the other question I have for -- well, I guess, then, all
24 right.

25 Any other questions of OP before we come back? If

1 you can address those issues to the applicant, particularly is
2 there a structural issue between second and third floors, and
3 why? I think I read in your report, though, that the support
4 for the second floor is necessary for the third floor to be
5 done. I don't know. Please explain.

6 MS. MOLDENHAUER: I think Ms. Fowler can address
7 that.

8 CHAIRPERSON JORDAN: Okay.

9 MS. FOWLER: Okay. Good morning. I've inspected
10 this property and observed numerous structural issues basically
11 kind of created by the bearing wall. There's a north-south
12 bearing wall, the one that we're hoping to remove. The primary
13 structural concern stems from this unsound bearing wall that
14 bears the load of both the front upper roof and the back side
15 of the rear roof.

16 Damage has been caused over the years by extended
17 deferred maintenance and deficient alterations. Previous
18 owners have conducted renovations that have caused defects in
19 this wall. I have observed holes in joists, roof leaks, and
20 stress cracks throughout the property centered on that interior
21 load-bearing wall.

22 Additionally, the party wall has been affected by
23 this wall, because they're tied together. I've observed cracks
24 in the party wall caused by this defective wall, interior wall.

25 Because these holes were adding without bracing, the

1 wall has sagged. I also observed that there is bowing in the
2 basement where it appears as if there are insubstantial
3 footings underneath this wall, which would be really difficult
4 to modify without substantial underpinning.

5 Currently, the basement is completely finished. It's
6 a separate unit. And the kitchen is adjacent to this wall. In
7 order to kind of keep this bearing wall and repair it would
8 require substantial demolition of the space. This is where the
9 owner plans to live during the construction. So it would cause
10 a difficulty with construction phasing to have to completely
11 demolish this area to be able to underpin.

12 CHAIRPERSON JORDAN: Let me ask you. What caused the
13 structural damage that's shown in these pictures?

14 MS. FOWLER: I think it's a couple of things. I
15 think in my experience, these interior walls, they're kind of
16 mid-house walls, tend to have smaller foundations. They don't
17 really have the step-out footings that you see on the party
18 walls. So part of it is, I think, settling over time, that
19 might have happened just on its own. And this is very common.
20 We see this in a lot of these original row houses.

21 So I think there's the footing issue, as well as the
22 fact that people over time have punched holes through this
23 wall. They haven't maintained it. So we've observed some
24 areas where the bricks are just missing and the mortar is bad.
25 So it's just kind of a combination of those elements.

1 And because this wall is kind of settling slightly
2 differently than the party wall, we're seeing cracks where the
3 wall meets the party wall. So it's causing strain on shared
4 wall and on both sides.

5 CHAIRPERSON JORDAN: Board, any additional questions
6 to the applicant?

7 MR. MAY: Yes.

8 CHAIRPERSON JORDAN: Yes, Mr. May.

9 MR. MAY: So, can you point out which wall you're
10 talking about?

11 Can we get the lights so we can see better?

12 MS. FOWLER: So this is the first floor demolition
13 plan.

14 MR. MAY: Thank you.

15 MS. FOWLER: And you can see kind of between the
16 existing kitchen and the existing dining room. There's a thick
17 wall. This is a masonry wall. It kind of extends up, and it
18 goes all the way up to the third floor, and it captures the end
19 of the -- kind of the weight of the third floor, of the rear.

20 (Pause.)

21 MR. MAY: So, how is it -- it captures the weight of
22 the third floor? I mean, typically, front and back walls don't
23 actually bear the joists.

24 MS. FOWLER: So, the roof load.

25 MR. MAY: The roof load?

1 MS. FOWLER: Yeah.

2 MR. MAY: Because the roof goes back to that point?

3 MS. FOWLER: Yes. The roof slopes from the front to
4 the back.

5 MR. MAY: And there's no intermediate spans from the
6 -- you know, that span from party wall to party wall?

7 MS. FOWLER: The floor systems go party wall to party
8 wall, the rafters.

9 MR. MAY: But I mean for the roof.

10 MS. FOWLER: You mean whether there's like a king
11 beam?

12 MR. MAY: Yeah.

13 MS. FOWLER: Potentially. There is potentially a
14 king beam there.

15 MR. MAY: Okay. And at that point, it would be
16 spanning from party wall to party wall, wouldn't it?

17 MS. FOWLER: The king beam would, yes. Yeah.

18 CHAIRPERSON JORDAN: Excuse me, Peter. I'm not
19 understanding the response. You said, I think, Mr. May, I
20 think you asked, "Is there one?" And I think you said,
21 "Potentially."

22 MR. MAY: Yeah. I mean, that's okay. I mean, that's
23 not really the critical thing.

24 CHAIRPERSON JORDAN: I just didn't understand it.

25 MR. MAY: You know, ultimately, I could understand

1 how it's -- I mean, it's really just bearing the weight of the
2 roof.

3 MS. FOWLER: Correct.

4 MR. MAY: Right. And I mean, did you look at
5 actually trying to pick up that load and carrying it to the
6 bearing walls rather than -- I mean to the party walls rather
7 than just looking at that segment of wall between the first and
8 second floors?

9 MS. FOWLER: Yeah. We did consider this, in order to
10 put a beam and carry this load down along the party walls would
11 also require substantial underpinning because we still have to
12 bring down the loads onto walls that have already been strained
13 and would probably have to be reinforced.

14 So the idea with this project is to take that roof
15 load and kind of disperse it over the rear of the property so
16 it's kind of -- the burden is carried by the three rear walls
17 instead of that one bearing wall in the center.

18 MR. MAY: Okay. So --

19 MS. FOWLER: Which would not require underpinning.

20 (Pause.)

21 MR. MAY: I'm not necessarily following the logic
22 here. Because you're basically saying that there is a
23 foundation problem that's driving this. And your solution is
24 to add more weight to the third floor, and, you know, perhaps
25 carrying it down differently. But you're going to be carrying

1 it down on either the bearing walls or the dog-leg wall or the
2 wall that you want to take out in some form.

3 So I don't really follow the logic. Can you explain
4 that to me in some way that makes sort of sense structurally or
5 diagrammatically? I mean, maybe you can do it in a drawing or
6 something. But I don't really understand it.

7 MS. FOWLER: Guys, can you address the issue of,
8 obviously, the basement and the option potentially for, you
9 know, trying to not have to have any renovation or demolition
10 in the basement unit as well?

11 MR. MAY: No, I understood that one. I mean, I
12 understand that doing underpinning on a finished space is
13 problematic. I understand that. I don't need that explained.

14 MS. FOWLER: I guess the point is that typically the
15 party walls and the perimeter exterior walls have more
16 substantial footings. And we have not observed any structural
17 issues with those walls.

18 MR. MAY: Right.

19 MS. FOWLER: So, in the rest of the house, there are
20 some framing issues. But there haven't been any settling
21 issues. So based on that, our assumption is that those
22 foundations are in good condition, where we can carry this roof
23 load onto those without having to reinforce those walls,
24 whereas that --

25 MR. MAY: You can carry it onto where? Onto the dog-

1 leg wall and the one party wall?

2 MS. FOWLER: Correct. So the party wall, the rear
3 wall, and the dog-leg -- the back three walls. We can kind of
4 disperse the loads over those walls, using the foundations that
5 exist rather than having to reinforce the interior load-bearing
6 wall. Because we're --

7 MR. MAY: So why wouldn't you just take the existing
8 load and distribute it over those walls now? I mean, you're
9 not only picking up the load from the roof of the third floor,
10 you're -- I mean, you can only distribute that load so far.
11 You can't make it go from the back wall -- I'm sorry, the wall
12 that you would take out all the way to the back wall without
13 putting in like steel to span the whole distance, right? And
14 obviously, you're not going to do that, I assume.

15 MS. FOWLER: We'd have a continuous slope that starts
16 from the front and goes all the way to the --

17 MR. MAY: Right. But it's going to be multiple
18 engineered lumber or something like that, right?

19 MS. FOWLER: Right.

20 MR. MAY: And so at a certain point, halfway or a
21 third of the way, thirds, something like that, you're going to
22 have to be picking that up. So where are you going to be
23 picking it up? Where is it -- sorry.

24 (Pause.)

25 MR. MAY: That entire span from front to back is not

1 going to be a single member, right?

2 MS. FOWLER: Correct.

3 MR. MAY: It's going to be two or three?

4 MS. FOWLER: I'm not sure yet. We haven't designed
5 that.

6 MR. MAY: Okay. So I guess I'm just not
7 understanding why there's something so difficult about bearing
8 a load at that midpoint in the house. I mean, it seems to me
9 that's driven exclusively by the fact that you want to knock
10 that wall out. And maybe that wall's not in great shape. But,
11 you know, masonry walls at the rear of houses that are carrying
12 only the load of a roof, it's not the biggest engineering
13 challenge to fix up that wall.

14 And even to fix that wall up and make new openings in
15 it -- I mean, to introduce steel and have -- you know, granted,
16 you can't necessarily take all that load all the way to the
17 party walls, but you can take it, you know, fairly far out.
18 And you leave yourself a column of an extra eight inches or
19 twelve inches or something like that, and then span the rest of
20 it with steel, and it usually picks it up. I mean, it happens
21 all the time in these sorts of houses.

22 MS. FOWLER: Well, let me just kind of redirect it
23 because I think the issue here is that it's an existing
24 nonconforming court, and that's one of the reasons why we're
25 here and we're having this issue. Obviously, if there was no

1 issues in regards to existing nonconformities, then we wouldn't
2 have this potential problem.

3 But obviously, because it's an existing nonconformity
4 as to the court, if we would actually have to comply with that
5 third floor with the court requirements, you're talking about
6 having to literally pull it back 10 feet from that wall, which
7 would then obviously create additional challenges with trying
8 to design that space and to create the load issues for that
9 space, as well, in regard to a zoning perspective.

10 MR. MAY: And I don't have any difficulty with the
11 fact that you have to live with a nonconforming court and that
12 there may be relief that's associated with that. That's not
13 really the issue. I'm just trying to understand the structural
14 justification for adding -- I mean, essentially you're saying
15 you've got to run that roof all the way to the very back wall
16 in order to make this work structurally. Am I boiling it down
17 too much?

18 MS. FOWLER: I think there's the question of,
19 obviously, the practical difficulty of identifying another
20 structural location for that wall, other than simply using the
21 existing structural wall and bearing the load on those existing
22 structural walls.

23 MR. MAY: I still don't understand it.

24 Do you understand it?

25 CHAIRPERSON JORDAN: No. I guess what I'm hearing

1 the applicant say, but that's something that we can talk about
2 in deliberation, is that the difficulty does exist. There
3 might be alternatives ways of resolving it. But still you're
4 going to need the relief that's necessary that you're asking
5 here to take care of that.

6 MS. FOWLER: Yes. And I think that the practical
7 difficulty is, obviously, you had to comply with, you know, the
8 lot occupancy here, which is nonconforming, or if you had to
9 comply with the issue in regards to the court requirements.
10 Those would create additional practical difficulty due to the
11 question of, where do you put or where do you have the
12 structural wall?

13 And considering that we have an existing finished
14 basement, and then that obviously reduces the location or the
15 ability to do underpinning through that existing location of
16 that wall, I think that -- or if you were to literally comply
17 with the court requirements, because the third floor is
18 permitted as a matter of right.

19 I mean, the height issue is obviously not the
20 question here. And so it's a question of being able to build
21 in compliance of the zoning regulations, but then requiring
22 this relief due to the existing nonconforming lot occupancy and
23 the existing nonconforming court.

24 CHAIRPERSON JORDAN: Okay. Any other questions?

25 Can we have the light? Or do we need to keep the

1 lights off? Anyone? Are we still using the diagram? Because
2 we also have them here.

3 (Pause.)

4 CHAIRPERSON JORDAN: Okay. Is the applicant --
5 anything else you want to present to the board?

6 MS. FOWLER: I'd like to turn it over to the property
7 owner to provide a little bit of a description of his community
8 outreach.

9 (Pause.)

10 MR. SEARLE: Thank you.

11 CHAIRPERSON JORDAN: I don't think the outreach is an
12 issue for us to meet, to delve down in. And I don't think
13 we've had that issue surface by either Planning or anyone.

14 MS. MOLDENHAUER: The Office of Planning mentioned
15 something about concerns about the neighbor.

16 CHAIRPERSON JORDAN: Okay.

17 MS. MOLDENHAUER: And I just wanted to indicate that
18 we had unanimous support of the ANC and that, you know, the
19 neighbor had provided a letter of support, supporting this
20 project.

21 CHAIRPERSON JORDAN: Right. We're not trying to just
22 speak for the sake of speaking. We're trying to hit the issues
23 so the board can make a decision. So, all right. If you think
24 it's necessary, then please go ahead.

25 MS. MOLDENHAUER: No. I don't believe that's

1 necessary then.

2 CHAIRPERSON JORDAN: Anything else that you believe
3 you need to present to the board before we --

4 MS. MOLDENHAUER: I'd just like to provide a brief
5 closing.

6 CHAIRPERSON JORDAN: No, we're not at the closing
7 point.

8 MS. MOLDENHAUER: Oh, we're not at the closing yet?

9 CHAIRPERSON JORDAN: We're still at the position of
10 your case. We're still on your case.

11 (Pause.)

12 MS. MOLDENHAUER: Then that's it at this moment.
13 Thank you.

14 CHAIRPERSON JORDAN: Then let's turn to the Office of
15 Planning, please. I know we talked to you before, but please,
16 if there is anything that you heard here that addresses or
17 anything else you want to say about this matter, please.

18 MS. VITALE: I don't think I have anything additional
19 to add at this time. I still think the need for the third
20 floor is an alternative. I think the applicant could address
21 structural issues, you know, by maintaining the existing two-
22 story rear addition without the requirement for the third
23 floor.

24 I do understand that underpinning in the finished
25 space could be problematic. But I think there are other

1 structural solutions, it sounds like, without the need to
2 distribute the full load to the rear of the property without
3 the addition of the third floor.

4 CHAIRPERSON JORDAN: What's the space area of the
5 extension for the third floor? How big is that? What's the
6 dimensions for that?

7 MS. MOLDENHAUER: It's only half because there's
8 already an existing third floor. So it's just -- it's simply
9 we'll pull that information up.

10 CHAIRPERSON JORDAN: I thought it was -- where's my
11 note?

12 (Pause.)

13 CHAIRPERSON JORDAN: Fifteen feet? No.

14 (Pause.)

15 CHAIRPERSON JORDAN: Thirteen feet. No? Is that
16 right?

17 MS. MOLDENHAUER: I believe it's approximately 15
18 feet wide by 28.5 feet deep.

19 CHAIRPERSON JORDAN: Okay.

20 MS. MOLDENHAUER: Yes, that's correct.

21 CHAIRPERSON JORDAN: So we're half, third, and you're
22 asking for the other half. And as I understand your argument,
23 it's that your -- and I know there's some discussion about how
24 you distribute the weight, that there's alternative methods.

25 MS. MOLDENHAUER: And it's our position that the

1 alternative methods would create a practical difficulty due to
2 the existing condition and the desire for not having to incur
3 additional demolition of the existing structure.

4 CHAIRPERSON JORDAN: But the alternative methods,
5 would you still need zoning relief?

6 MS. MOLDENHAUER: With the additional methods, you
7 would still need zoning relief, because no matter what, no
8 matter how we would potentially resolve the structural issues,
9 the property would still be noncomplying as to lot occupancy,
10 and it would still be noncomplying as to the court
11 requirements.

12 So no matter how we would be able to address this in
13 regards to structural issues, the request for the relief is
14 still the same, and the practical difficulty still arises out
15 of the same need.

16 CHAIRPERSON JORDAN: Board, any questions of the
17 Office of Planning?

18 (No audible response.)

19 CHAIRPERSON JORDAN: Applicant, any questions of the
20 Office of Planning?

21 MS. MOLDENHAUER: No.

22 CHAIRPERSON JORDAN: Are you sure?

23 MS. MOLDENHAUER: I mean, I guess one question would
24 be, in regards about that no matter what, even with the
25 alternative requirement, the relief would still be necessary,

1 does that resolve or change your opinion in regards to the
2 request for relief?

3 MS. VITALE: No, it does not.

4 CHAIRPERSON JORDAN: Okay. But let me ask, Ms.
5 Vitale, so if there was other ways of doing this, as we
6 discussed, does it require continued zoning relief?

7 MS. VITALE: I'm sorry. I'm not following your --

8 CHAIRPERSON JORDAN: I guess it's kind of the same
9 question.

10 (Laughter.)

11 MS. VITALE: Yeah. I was going to say.

12 CHAIRPERSON JORDAN: So, you were saying that you
13 thought there were other ways for it to be done that didn't
14 require the extension of the third floor.

15 MS. VITALE: Correct. I think we would have less
16 difficulty supporting this if the applicant was working within
17 the constraints of the existing footprint of the house rather
18 than trying to further extend and gain additional space.

19 CHAIRPERSON JORDAN: So, for the issues as we've
20 discussed about the structural issues to the building and the
21 need to support the other part of the roof that's already
22 there, and passing -- and I'm using not technical terms -- and
23 passing it on, what alternatives do they have that will allow
24 them to support that?

25 MS. VITALE: I think we heard they could support the

1 load of the roof where it terminates now with other structural
2 members, a cross beam that would support the load across the
3 party walls at the existing termination of the second -- or of
4 the existing house before you have that dog-leg addition. That
5 could be done there. And you would be working within the
6 existing footprint.

7 CHAIRPERSON JORDAN: And it would not require any
8 zoning relief?

9 MS. VITALE: No, it would not.

10 CHAIRPERSON JORDAN: Okay. All right.

11 Any other questions of the Office of Planning,
12 anyone?

13 Any cross?

14 MS. MOLDENHAUER: Of Office of Planning?

15 CHAIRPERSON JORDAN: Yes.

16 MS. MOLDENHAUER: Again, I just have one question for
17 Office of Planning, because you're indicating that the concern
18 is about the additional third floor. And I know that OP now
19 has been kind of reviewing lot occupancy almost on a horizontal
20 plane perspective, not just kind of on the original footprint
21 perspective.

22 But your concern is about the third floor, yet the
23 third floor would actually be compliant as to lot occupancy at
24 53 percent lot occupancy, which is under the required lot
25 occupancy requirement. So I guess my question is, why would OP

1 be opposed to just simply an addition when that addition is
2 more compliant, obviously, than the footprint of the building
3 when you're looking at it on a horizontal plane perspective?

4 MS. VITALE: I think partially because --

5 CHAIRPERSON JORDAN: That was a mouthful.

6 (Laughter.)

7 MS. VITALE: I understand what you're saying. But
8 you're not looking at it on a horizontal plane. You are
9 increasing the total lot occupancy, and you're further
10 extending that nonconforming quarter by adding that addition at
11 the dog-leg.

12 CHAIRPERSON JORDAN: All right. Anyone? Additional
13 questions?

14 (No audible response.)

15 CHAIRPERSON JORDAN: So then, the Department of
16 Transportation? As much as I sat here and said we're so glad
17 to have them, they left. I think we have a letter of no
18 objection from the Department of Transportation.

19 Anyone here from ANC 6E? We do have a letter of
20 support from ANC 6E.

21 Is there anyone here wishing to speak in support of
22 this application? Anyone wishing to speak in support of this
23 application?

24 (No audible response.)

25 CHAIRPERSON JORDAN: I think we have letters from how

1 many neighbors? Is it two neighbors?

2 MS. MOLDENHAUER: The direct neighbors.

3 CHAIRPERSON JORDAN: Okay.

4 MR. MAY: So, you have letters from both direct
5 neighbors?

6 MS. MOLDENHAUER: I think maybe one is our one
7 neighbor. And the other one had verbally communicated, and
8 this is what the man was going to put -- verbally communicated
9 they would support, but they did not provide a letter.

10 CHAIRPERSON JORDAN: Okay. Both neighbors then,
11 okay.

12 MS. MOLDENHAUER: One letter, one verbal support.

13 CHAIRPERSON JORDAN: Is there anyone here wishing to
14 speak in opposition to this application? Anyone in opposition
15 to this application?

16 (No audible response.)

17 CHAIRPERSON JORDAN: Then let's turn back to the
18 applicant for rebuttal testimony, if you wish.

19 MS. MOLDENHAUER: I'd just like to conclude by
20 indicating that we believe that the applicant does satisfy the
21 three-pronged task. This is an issue of a confluence of
22 factors where we've articulated the practical difficulty, as
23 been testified on the record, that no matter what potential
24 alternative would be provided here, relief would still be
25 needed.

1 And that even if they were to potentially comply with
2 the court relief, which OP has now indicated that their concern
3 about the continued nonconforming court, that would create
4 additional practical difficulty and literally pulling that back
5 for a 10-feet, 11-inches back from that current wall to comply
6 on the third floor.

7 And that in order to maintain the existing structural
8 walls, that without having to demolish a portion of the
9 existing structure to comply with lot occupancy and without
10 having to demolish a portion of the existing basement unit
11 where the kitchen is located on the basement, in order to pull
12 that existing structural wall down to the ground floor into the
13 below-grade cellar level, that the relief is requested.

14 And the applicant has reviewed the alternative
15 options, and that as we indicated, all of those options would
16 still either require relief and create a practical difficulty,
17 based on the current configuration of the structure. And due
18 to that, we believe that there's no adverse impact to the
19 public good or to the zone plan in this regard. The height
20 that we're providing is still compliant. The lot occupancy as
21 regards to that addition, small addition on the third floor, is
22 underneath the 60 percent; it's at 53 percent lot occupancy on
23 that third floor addition.

24 And that the relief that we're requesting is small in
25 regards to the request here in comparison to other requests and

1 in regards to the standard that we've provided. In that
2 regard, we would request that the board support the case. We
3 have ANC, unanimous support from the ANC in this case, as well
4 as support from the neighboring property owners.

5 CHAIRPERSON JORDAN: What is -- the present lot
6 occupancy is 77 percent?

7 MS. MOLDENHAUER: Seventy-seven percent, yes.

8 CHAIRPERSON JORDAN: It's going to remain 77 percent.

9 MS. MOLDENHAUER: Yes. It will remain 77 percent.
10 But then on the third floor, it's 53 percent.

11 CHAIRPERSON JORDAN: Got it. Okay.

12 MR. MAY: So it's 53 for the footprint of the house
13 itself?

14 MS. MOLDENHAUER: Of the house itself.

15 MR. MAY: And that excludes the court?

16 MS. MOLDENHAUER: That excludes the court.

17 MR. MAY: What's the width of the court?

18 MS. MOLDENHAUER: The width of the court is 5 feet 11
19 inches.

20 MR. MAY: Okay.

21 MS. MOLDENHAUER: It was 11 inches smaller, it would
22 then have been incorporated in the lot occupancy requirements.

23 MR. MAY: Okay.

24 MS. MOLDENHAUER: Sorry.

25 CHAIRPERSON JORDAN: Anyone else have questions for

1 the applicant?

2 (No audible response.)

3 CHAIRPERSON JORDAN: Then we will conclude this
4 hearing. And is the board ready to deliberate on this matter?

5 (Pause.)

6 CHAIRPERSON JORDAN: I could support the application.
7 I think that we clearly have a showing that this building has
8 unique situations, circumstances, and that there is a practical
9 difficulty to be able to make any changes to this building
10 within the zoning regulations no matter what the alternatives
11 would be. It's still going to require us to have some zoning
12 relief.

13 I think, like they said, there's probably some
14 technical ways that others can do it, but I have not heard
15 anything to the contrary that it's not going to require zoning
16 relief. And so, therefore, I would believe that they have the
17 necessary practical difficulty. But that's my thought.

18 Anyone else want to weigh in?

19 Mr. May?

20 MR. MAY: Mr. Chairman, I would respectfully
21 disagree. I don't think the case has been made that this is
22 the only solution that's necessary. And I mean, it seems to me
23 that this is driven, you know -- based on the information that
24 we have in the record, this is driven entirely by the desire of
25 the applicant to remove that intermediate wall in order to open

1 space on lower floors, or something like that, and to add space
2 to the third floor. I mean, this is really all that it's
3 about.

4 I don't see any evidence in the record that really
5 this is a structural issue. We do have the testimony of the
6 architect, which I don't discount. But I didn't -- I don't
7 have the feeling that every alternative has been explored, and
8 I think it's quite possible that a solution could be found that
9 would not require displacing a tenant or making it difficult to
10 use that lower floor.

11 I mean, the fact that you can't live in the basement
12 while the upper floors are being renovated isn't an argument of
13 any sort, because then all you have to do is, you know,
14 renovate that, do that part of it first, fix it up, and then
15 you can move in.

16 And how you staged the construction of this isn't
17 really -- I mean, that's not really a concern. We've never had
18 to consider, well, they want to stay living in the house, and
19 so therefore, they need relief in order to get their work done.
20 That doesn't really fly.

21 I think that it may be possible for the applicant to
22 make an argument that it really truly is structurally necessary
23 to build a third floor addition. But I think that there is an
24 inherent contradiction in saying the walls can't bear a
25 renovation of the existing form, but they can handle an

1 expansion, s o instead of reducing load, you can increase load
2 and somehow it's all going to work better. It just doesn't
3 fly, for me.

4 So, I think that, you know, if we want to leave the
5 record open for the applicant to submit additional information
6 to make the case structurally, with some better drawings and
7 better photographs that document the structural problem and how
8 it would need to be fixed, then I'd entertain it. But I don't
9 see it here, and frankly, I think it would be hard to prove.

10 CHAIRPERSON JORDAN: All right. I can take that as
11 an alternative, that we get the record support that you've
12 examined alternatives, and provide that to the board.

13 MR. MAY: Not just even examine alternatives, but
14 prove that this really is what works.

15 CHAIRPERSON JORDAN: Well, that's what I meant by
16 that.

17 MR. MAY: Okay.

18 CHAIRPERSON JORDAN: Not just a statement to that
19 effect, but certainly provide the board the information, the
20 evidence to support why you're at the point where you are and
21 what's necessary, that you did look at the alternatives as
22 addressed. And then whether or not that's going to require
23 zoning relief, or whether the other alternatives are even
24 practical. Okay. So, if that's -- then that would be the --
25 yes.

1 MR. MAY: Can I add one other point? I'm also
2 severely troubled by this stairway access to the roof, that
3 little penthouse thing. That's still in the plans, right?

4 MS. MOLDENHAUER: We have not yet -- this was
5 obviously, we've determined to go to the BZA first before going
6 to Historic. We've heard from OP that that is of concern
7 potentially to Historic's staff. And so, obviously, that will
8 be evaluated and decided upon, obviously, through the architect
9 in discussion with them as well.

10 MR. MAY: Okay. So it's difficult enough for me,
11 looking at the backs of these houses, to accept that a third-
12 story addition in that area really fits well with the context.
13 And I'm really exceedingly surprised that you might have
14 support from, particularly the neighbor to the north, whose
15 light is going to be blocked to some extent by this.

16 Having a penthouse entrance to a roof deck on the
17 rear portion that you're building up is even more problematic.
18 And I think that, you know, if you come back with that in
19 there, I'm not going to vote for it even if you make the
20 structural case.

21 MS. MOLDENHAUER: We will take that under advisement.
22 Thank you.

23 CHAIRPERSON JORDAN: Okay. I had skipped down, but
24 thank you. All right. So let's do that.

25 And Mr. Moy, does the board want this on a decision,

1 or does the board want this on a hearing? Do you think you
2 might ask the questions?

3 MR. MAY: You know, I mean, if they elect to submit
4 additional information to try to make the structural case, then
5 I think I would like to ask them questions about it.

6 CHAIRPERSON JORDAN: Okay. Mr. Moy, when is another
7 date that Mr. May will be with us?

8 (Pause.)

9 MR. MOY: Do you know, Mr. May, what your next date
10 may be?

11 MR. MAY: You know, I'm scheduled for the 16th, but
12 I'm trying to switch it to the 2nd. So, but I don't know that
13 I'm going to be able to do that. You know, we can schedule it
14 for another day, and I can -- I'll check my schedule. I can
15 come in just for this.

16 MR. MOY: Yeah, because as Mr. May just said, he
17 mentioned the 16th. We were talking, that was the 16th of
18 December he was referring to.

19 MR. MAY: December, yeah.

20 MR. MOY: I'm suspecting you will want to see if we
21 can schedule this in the month of November.

22 (Pause.)

23 MR. MOY: Well, the last date in November, Mr.
24 Chairman, is November the 18th. It's quite a bit on that
25 docket, but I think we could --

1 CHAIRPERSON JORDAN: Oh, we're not squeezing.

2 MR. MOY: You're not? You knew what I was going to
3 say. Well, the only other day actually would be next week,
4 Wednesday, the 5th, if that's not too soon.

5 MS. MOLDENHAUER: I don't believe that's enough time
6 for us to address these issues.

7 MR. MOY: All right. So we're into December then.
8 So we're looking at December --

9 CHAIRPERSON JORDAN: The 2nd, is it?

10 MR. MOY: We can do the 2nd. Can you do that?

11 CHAIRPERSON JORDAN: December 2nd.

12 (Cross-talk.)

13 MR. MOY: Later in the day.

14 CHAIRPERSON JORDAN: And of course, the information
15 should be submitted at least seven days in advance.

16 MR. MOY: Okay. Seven days in advance.

17 CHAIRPERSON JORDAN: But, I mean, Office of Planning
18 may need it even before that. But normally, seven days is good
19 for us.

20 MR. MOY: Then we're looking at November 24th, which
21 is a Monday.

22 MS. MOLDENHAUER: Well, we'll try to get it in,
23 obviously, before the Thanksgiving time frame. And that will
24 give enough time, I think, for OP, for us to kind of
25 communicate back and forth on that as well.

1 CHAIRPERSON JORDAN: Very good.

2 All right. So that would be the order of the board
3 that we will then move this for a continued hearing to --

4 MR. MOY: December 2nd.

5 CHAIRPERSON JORDAN: December 2nd. Okay? Thank you
6 very much. Appreciate it.

7 Now, let's try to manage the docket. We could either
8 -- we have at least two hearings and appeal -- not an appeal.
9 Three hearings left, and one with party status. And not unless
10 counsel wants to tell me this has been resolved by the
11 discussions that you've had and it's all worked out and
12 everybody is holding hands singing Kumbaya. I take it no.

13 MS. MOLDENHAUER: Unfortunately, no.

14 CHAIRPERSON JORDAN: Did you at least start humming,
15 start to warm up for it?

16 MS. MOLDENHAUER: We were run back and forth, and we
17 definitely -- I don't know where Marty is. We tried. But --
18 so.

19 CHAIRPERSON JORDAN: All right. So then, docket-
20 wise, board, I think maybe we probably need to do lunch break
21 now. There's no other way to manage this to get people in and
22 out before lunch. It's just one of those dockets. We've been
23 very successful in doing it.

24 Is that okay with the board, or do you want to try to
25 -- I was trying to at least do another case in here, and I just

1 don't think we can get it. Right? There's nothing else that's
2 going to be quick on here.

3 So, how long do you need? You know, I eat like in 10
4 minutes. Thirty minutes? Forty? An hour? An hour? Forty?

5 SPEAKER: Can we do 45?

6 CHAIRPERSON JORDAN: So let's say get back at 12:30.

7 MR. MOY: Can we announce which would be the next
8 case?

9 CHAIRPERSON JORDAN: Now, let me ask, because I know
10 there was a courtesy. If we want to put in the record on --
11 board, give me some deference here. On 18708, the
12 representative of the German Embassy -- is that correct?

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

14 CHAIRPERSON JORDAN: If you wanted to read your
15 statement into the record, then you would not have to stay. If
16 you wanted to just read your testimony into the record. Or are
17 you going to stay for the full hearing anyway?

18 MR. WIERSCHEM: I'll just stay for the hearing.

19 CHAIRPERSON JORDAN: Oh, well, then, thank you. And
20 we will be in lunch recess until 12:30. Thank you.

21 (Whereupon, at 11:49 p.m., a luncheon recess was
22 taken, to resume at 12:49 p.m.)

23

24 A F T E R N O O N S E S S I O N

25

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1 CHAIRPERSON JORDAN: All right. We'll go back in
2 session.

3 Mr. Moy, do you want to call our next case?

4 MR. MOY: Yes. Thank you, sir. That would be
5 application number 18844. That is the application of Alexander
6 Pitt and Christine Qiang. I'm not sure I'm pronouncing that
7 correctly.

8 But this is a request, as advertised, for variances
9 from lot occupancy, rear yard, court, and nonconforming
10 structure requirements. And the applicant did submit an
11 affidavit of posting, Mr. Chairman.

12 CHAIRPERSON JORDAN: Okay. And did we correct the
13 self-certification?

14 MR. GREIGG: We've submitted all the paperwork that
15 was requested.

16 CHAIRPERSON JORDAN: We have to make sure that the --
17 is that the self-cert?

18 MR. GREIGG: I don't have a self-cert in my hand, but
19 I do have an affidavit of posting.

20 CHAIRPERSON JORDAN: I understand that part of the
21 self-cert -- could you do the self-certification?

22 MR. GREIGG: Yeah. We did the self-certification,
23 but we did that a long time ago. I don't know why you wouldn't
24 have that.

25 CHAIRPERSON JORDAN: Let me try to pull up -- the

1 self-certification does not have the architect registration
2 number nor the attorney's Bar number if there is one or the
3 other.

4 MR. GREIGG: There's no attorney.

5 CHAIRPERSON JORDAN: So what about the architect
6 registration? You're the architect, right? No?

7 MR. GREIGG: I'm representing the architectural firm,
8 yes.

9 CHAIRPERSON JORDAN: Okay. Okay. What's your name?

10 MR. GREIGG: Michael Greigg.

11 CHAIRPERSON JORDAN: Okay. And are you an architect?

12 MR. GREIGG: Yes.

13 CHAIRPERSON JORDAN: Okay. And do we have a copy of
14 the self-cert?

15 (Pause.)

16 MR. MOY: Just a second, sir. It should be Exhibit
17 No. 4.

18 CHAIRPERSON JORDAN: Okay. The architectural
19 registration number is not on there. So you need to amend
20 that.

21 We'll proceed. But it needs to be on the form.

22 MR. GREIGG: Understood.

23 (Pause.)

24 CHAIRPERSON JORDAN: All right. And why was the
25 affidavit of posting late?

1 MR. GREIGG: Just an administrative error; we
2 overlooked it.

3 CHAIRPERSON JORDAN: Okay. Okay. We'll accept that.
4 All right. What do we have here?

5 (Pause.)

6 CHAIRPERSON JORDAN: Identify yourself for us,
7 please?

8 MR. PITT: I'm Alex Pitt. I'm the owner of the
9 house, together with my wife, who is not here.

10 CHAIRPERSON JORDAN: All right. So this is before us
11 for a variance from lot occupancy. And what else? And open
12 court requirements, right?

13 (No audible response.)

14 CHAIRPERSON JORDAN: I have to catch up with myself.
15 One second here.

16 (Pause.)

17 CHAIRPERSON JORDAN: Okay. Let's do this. Let's go
18 to the Office of Planning first. Why don't you identify
19 yourself? And then let's talk about the issues, because the
20 Office of Planning still maintains a denial, correct?

21 MR. MORDFIN: That's correct. And good afternoon. I
22 am Stephen Mordfin with the Office of Planning. And the Office
23 of Planning is recommending denial of this case. It's a
24 request for two area variances, one to lot occupancy, one to
25 open court.

1 However, first off, the Office of Planning doesn't
2 see any uniqueness to this property that would result in a
3 practical difficulty to the applicant. The first, for lot
4 occupancy, the Office of Planning sees that the lot occupancy
5 is 69.4 percent, and it's a rectangular property. It's zoned
6 R4, developed with a row house similar to the ones adjacent to
7 it.

8 We don't see any uniqueness there that prevents the
9 applicant from using the property as intended as a row house.
10 It is being used as a row house.

11 And the same thing also with the open court. There's
12 an existing nonconforming court, which can, of course,
13 continue. However, the proposed application proposes to
14 continue the nonconformity into the rear yard, and also for
15 that we see no uniqueness that would result in a practical
16 difficulty for not providing the open court at the width that's
17 required. I think what's proposed is 4.5 feet, and a minimum
18 of 6 feet is required for an open court.

19 And so because of that, the Office of Planning
20 recommends denial of this application.

21 CHAIRPERSON JORDAN: Very good. Thank you.

22 Okay. So I'll turn back to the applicant and have
23 them address. And there's one thing that's completely missing
24 here. So tell us how -- go ahead and present your case, as you
25 know you need to meet the standard that's required for the

1 relief you've requested, first of which is showing the board
2 that your property is unique in some situation or circumstances
3 which leads to the practical difficulty why you need relief.

4 MR. GREIGG: Okay. Let me try to address it this
5 way. When we first did the application and were reviewing the
6 property, we noticed that the property was existing
7 nonconforming. We have an existing open court, which is
8 nonconforming. And we have a lot occupancy over the 60 percent
9 required. And that's where we started the conversations, and
10 we've been through the ANC portions of the program.

11 After that, we had a discussion with Department of
12 Planning. They expressed their concerns, and we went back and
13 relooked at it. I think where we're at currently is that what
14 was not taken into account on the lot occupancy, and Mr.
15 Mordfin can probably address this also, was that when we did
16 the lot occupancy calculations, we did not include the rear
17 deck that we're removing to create the structure.

18 The existing rear deck is actually four feet above
19 the ground, so it should have been included as part of the lot
20 occupancy, which pushes our lot occupancy of nonconforming up
21 into about 75 percent.

22 And if the Department of Planning is agreeing to that
23 what we're seeing there, then I think that we don't need to
24 have a variance as such, because we're just replacing the deck
25 floor plate and creating the addition, where that current deck

1 is located.

2 CHAIRPERSON JORDAN: You're really kind of confusing
3 me here.

4 MR. GREIGG: Sorry about that. It's just been
5 evolving over the -- from the time we made the application,
6 after we had the conversation with the Department of Planning.

7 CHAIRPERSON JORDAN: Okay. You're saying that you
8 don't think you need --

9 MR. GREIGG: I don't think so. Because if Department
10 of Planning acknowledges that the existing deck, which is four
11 feet above the ground, is part of the lot occupancy, then we
12 have an existing lot occupancy of 75 percent, which the
13 proposed addition is going to take up that same footprint.

14 CHAIRPERSON JORDAN: But you --

15 MR. GREIGG: I wouldn't need a variance in order to
16 do that, I do believe, because we're not making the lot
17 occupancy worse than it currently is.

18 CHAIRPERSON JORDAN: So you're saying it would not be
19 expanding the nonconforming?

20 MR. GREIGG: We are not expanding the nonconforming.
21 We're just continuing what is nonconforming.

22 CHAIRPERSON JORDAN: And what about the -- that just
23 doesn't --

24 MR. GREIGG: The reason why we were looking at the
25 open court as a nonconforming for the variance was because, if

1 the Board of Zoning Administration and Planning would have said
2 that the open court was a nonconforming and would allow us to
3 have that square footage back, we were going to add that square
4 footage to the back of the house and not increase -- and try
5 not to increase the property larger than it is.

6 (Pause, the Chairman conferred with Ms. Glazer.)

7 CHAIRPERSON JORDAN: Got you, got you.

8 All right. And thank you, Ms. Glazer.

9 The board can't advise you as to what you need to do
10 at your property, and we can't sit -- we can only deal with
11 what you come to us and ask us for relief. And we don't --
12 we're not advisory of nature.

13 And so what I'm thinking what we need to do, give you
14 a chance to meet with the Zoning Administrator, Office of
15 Planning, if you believe that you no longer need relief, is to
16 have discussions with them. And then come back. We will
17 continue this and not ask you to repay just in case you can
18 come back and always dismiss it, whatever you want to do.

19 But I think it gives you a chance to talk to the
20 Zoning Administrator, Office of Planning, and see where you
21 really are.

22 MR. GREIGG: Yeah, that's fine. We wouldn't mind
23 requesting a continuance.

24 CHAIRPERSON JORDAN: Okay.

25 So, Mr. Moy, let's see where we are.

1 MR. MOY: Mr. May.

2 MR. MAY: If I may, just to make sure that all the
3 bases are covered for when you come back, I am confused by the
4 section drawing, A3.0, which seems like you have a stairway
5 that leads to the top of the carport.

6 MR. GREIGG: Correct.

7 MR. MAY: But the carport is an open carport.

8 MR. GREIGG: It's an open carport.

9 MR. MAY: So why do you have a stairway going up to
10 the top of it?

11 MR. GREIGG: Fair question. The reason why is
12 because there is a stairway going down from the carport area
13 into an accessory apartment area. And we need to keep the
14 headroom. So.

15 MR. MAY: And so you just have a stairway that goes
16 to nowhere?

17 MR. GREIGG: Correct. Yeah. We figure at the
18 trellis we might plant some ivy or something like that. They
19 can open the door and water the plants or something like that.
20 But we need the headroom.

21 MR. MAY: I see. Okay. Because it sort of implies
22 that, you know, you're intending to make that, the top of the
23 carport, into a deck.

24 MR. GREIGG: No, sir.

25 MR. MAY: Okay. Okay.

1 CHAIRPERSON JORDAN: Okay. So, can we have a date,
2 please?

3 MR. MOY: Yes. I was going to December 16th, but I
4 thought Mr. May said that he won't be here on December 16th.

5 MR. MAY: We haven't really heard anything of
6 substance here. Anybody else could take this up. It doesn't
7 have to be me.

8 MR. MOY: It doesn't have to -- okay.

9 CHAIRPERSON JORDAN: So you're saying December 16th?
10 Is that what you're saying, Mr. Moy?

11 MR. MOY: I would, as early as December 9th, or the
12 16th.

13 CHAIRPERSON JORDAN: What is the docket load? How
14 many do we have on December 9th?

15 MR. MOY: I should have known you were going to ask.
16 The 9th, we have seven cases, three on expedited. On the 16th,
17 we have six cases, and one for decision.

18 CHAIRPERSON JORDAN: Okay. So take your pick.
19 December 9th or December 16th? What works for you?

20 MR. GREIGG: December 9th.

21 CHAIRPERSON JORDAN: Okay. December 9th.

22 MR. MOY: And any additional submissions, at least a
23 week prior to the hearing to submit.

24 MR. GREIGG: Understood.

25 MR. MOY: Thank you.

1 CHAIRPERSON JORDAN: But I certainly advise you to
2 meet with the Zoning Administrator and to meet with the Office
3 of Planning and be sure that you're on solid ground.

4 MR. GREIGG: Understood.

5 CHAIRPERSON JORDAN: Okay? All right. Thank you.
6 Then that will conclude this hearing, this case. Thank you.

7 (Pause.)

8 CHAIRPERSON JORDAN: No, not yet, Meridith. I said
9 not yet, Meridith.

10 (Laughter.)

11 CHAIRPERSON JORDAN: We have one more in front of
12 you. I heard you.

13 (Inaudible interjections.)

14 CHAIRPERSON JORDAN: No, no. We have not called you
15 yet. That's what I was telling you. When you called the case,
16 I said, "No, we're not, Meridith. We have another one in front
17 of you."

18 (Inaudible interjections.)

19 CHAIRPERSON JORDAN: Oh, that's your case, too? You
20 have 18794? We're on 18794, is that correct? Is that your
21 case?

22 MR. MOY: That's her case, I think.

23 CHAIRPERSON JORDAN: Okay. Give me five minutes. Go
24 ahead. Got you.

25 (Inaudible interjections.)

1 CHAIRPERSON JORDAN: Got it. Got you. Got you. You
2 know what? For that, I'll give you 10.

3 (Laughter.)

4 (Whereupon, at 1:02 p.m., a recess was held, to
5 resume at 1:09 p.m.)

6 CHAIRPERSON JORDAN: Oh, yeah? I can take that. I
7 didn't have anything else to do this century.

8 (Laughter.)

9 CHAIRPERSON JORDAN: Since we're already seated at
10 the table, I guess we really should make a move. If I put the
11 right password in my computer, I think we're okay.

12 (Pause.)

13 CHAIRPERSON JORDAN: Okay. Let's take a guess which
14 case you're going to call here. Let's do 18708, correct? Is
15 that where we are? 18708.

16 Would you introduce yourselves, please?

17 MR. SULLIVAN: Yes, thank you, Mr. Chairman. My name
18 is Marty Sullivan, the law firm of Sullivan and Barros.

19 MS. MOLDENHAUER: Meridith Moldenhauer, from the law
20 firm of Griffin, Murphy, Moldenhauer, and Wiggins, on behalf of
21 the opposition.

22 CHAIRPERSON JORDAN: Okay. Are there some
23 announcements you want to make to the board?

24 MR. SULLIVAN: We would like to request an
25 adjournment for one week to next Wednesday, the 5th. I've

1 talked to staff and understand there is room for that. We
2 think we're on course for an agreement. And we just need to
3 work out the details.

4 CHAIRPERSON JORDAN: Is that the Wednesday docket?

5 MS. MOLDENHAUER: That is.

6 CHAIRPERSON JORDAN: You know we're doing a Wednesday
7 docket, right?

8 MR. SULLIVAN: Yes.

9 CHAIRPERSON JORDAN: Some kind of way we're doing a
10 Wednesday docket. Just out of the clear blue sky, we're doing
11 a Wednesday docket, but anyway.

12 So, how many do we have on that Wednesday?

13 MR. MOY: By my count, five cases.

14 CHAIRPERSON JORDAN: Ah, we're good. We're good for
15 Wednesday.

16 MR. MOY: One which is an appeal, but yeah.

17 CHAIRPERSON JORDAN: Okay. Then we'll move this to
18 next week, give you time to hammer out what you need to hammer
19 out.

20 MR. SULLIVAN: Okay. Thank you.

21 (Pause, inaudible conversation.)

22 CHAIRPERSON JORDAN: Okay. Let's call your last --
23 can we call the last case on the Meridith Moldenhauer docket,
24 please?

25 Application No. 18794

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1 MR. MOY: Yes, sir. That would be application number
2 18794, of Newton St Development 3 LLC. This is a request for
3 multiple variances, Mr. Chairman.

4 CHAIRPERSON JORDAN: Is there a way that you could
5 get your own docket? Is that the way you do it?

6 MS. MOLDENHAUER: I think I would literally be
7 running around with my head chopped off at that point.

8 CHAIRPERSON JORDAN: You had what? Three or four on
9 today's docket. This is one I think we've already heard, have
10 we not?

11 MS. MOLDENHAUER: Yes. It's a continuance.

12 CHAIRPERSON JORDAN: And that there was some
13 supplemental information requested; is that right?

14 MS. MOLDENHAUER: Yes. And we also reduced the
15 requested relief and removed the penthouse, and we provided a
16 summary of the proffered conditions that had previously been
17 discussed.

18 CHAIRPERSON JORDAN: What did I do with those?

19 MS. MOLDENHAUER: We also had met with OP between the
20 last hearing and this hearing.

21 CHAIRPERSON JORDAN: Let me catch up.

22 So let's do introductions, please.

23 MS. MOLDENHAUER: Good afternoon. My name is
24 Meridith Moldenhauer on behalf of the applicant. I am here
25 today with representatives of the applicant, and I'll start on

1 my left.

2 MR. EDGERTON: Hello. My name is Jimmy Edgerton.
3 I'm a partner at Newton St Development. To my left is Nick
4 Hodges, builder and partner. And on the far right is Dave
5 Bloom, architect and partner, Newton St Development.

6 CHAIRPERSON JORDAN: Okay. Let me turn to the Office
7 of Planning and see if -- Ms. Thomas, where are we? Is Office
8 of Planning still where they were?

9 MS. THOMAS: Good afternoon, Mr. Chairman, members of
10 the board. Karen Thomas for the Office of Planning.

11 Unfortunately, while we do appreciate the applicant's
12 attempt to renovate this property, we cannot go beyond
13 supporting an internal renovation, meaning that we would not be
14 able to support the addition.

15 CHAIRPERSON JORDAN: Because you still maintain that
16 there's no uniqueness to this property, et cetera, correct?

17 MS. THOMAS: That is correct.

18 CHAIRPERSON JORDAN: Okay.

19 Ms. Moldenhauer, would you go ahead and tell us what
20 you need to tell us in regards to changes made? And again,
21 hammer home why you believe that this property has unique
22 aspect to it and the difficulty.

23 MS. MOLDENHAUER: Yes. I want to turn then to Dave
24 to present the changes and the uniqueness of the case.

25 MR. BLOOM: So, my name is Dave. I'm the architect

1 and partner on this project.

2 CHAIRPERSON JORDAN: Excuse me one second.

3 The lights, please?

4 (Pause.)

5 MR. BLOOM: So what you see on the screen now are two
6 versions of the elevation that faces Rhode Island. The one on
7 the left was what we showed you previously. The one on the
8 right is our revised elevation. It's a little hard to see, but
9 the one on the left does have a penthouse structure, which is
10 the stairs that takes you to the roof deck.

11 One of the comments from our last meeting was that
12 that was objectionable, so we have removed that. We continue
13 to have a roof deck, but instead of having an enclosed stair,
14 there's an exposed stair. So when you're on the third floor,
15 there's a door to the exterior that then takes you up to a
16 stair to the roof deck. So from any vantage point on the
17 street, you do not see anything about the parapet line.

18 This is what it looks like from the New Jersey side
19 of the property. A little hard to see on the left again, but
20 there was a stair enclosure there that we have removed. Just
21 to touch quickly on the third-floor addition, this building has
22 an existing mansard roof that encloses the attic space right
23 now. It's essentially half the height of what you see on the
24 slide in front of you.

25 To get that third floor, we are extending that slope

1 of the mansard roof up to form that third floor. The goal
2 really here is to make a renovation where if you see this
3 building for the first time, it's like it's always been that
4 way. We're very sensitive to the historic nature of this
5 building. Even though it's not an historic district, it is on
6 a very prominent site.

7 The other thing we did, and what you see with the
8 mansard roof is there is a second, steeper slope at the top of
9 it. That actually is there to form the guard rail for the roof
10 deck. You know, typically, in roof decks a lot of times you
11 see the pressure-treated lumber guard rail, which to me as an
12 architect is a bit of an eyesore most of the time. And we
13 really wanted to minimize that, or eliminate that, in this
14 case.

15 So here's the plans of the roof deck. Again, on the
16 left was what we had originally proposed. On the right, you
17 see the stair down; now that is an exterior stair.

18 This is just showing the before and after. On the
19 left now, this is the existing conditions. As I mentioned, the
20 mansard roof now, it's approximately six feet nine inches.
21 We're extending that up to 13-3 inches, so just about doubling
22 it. But the overall height of the building, as measured to the
23 top of the turret, remains at just over 39 feet.

24 Here you see the site plan.

25 MR. MAY: I'm sorry. Did you actually submit this

1 presentation?

2 MS. MOLDENHAUER: No, we don't have it actually as
3 part of the record. But all of the images are part of the
4 record.

5 MR. MAY: Okay. Well --

6 MS. MOLDENHAUER: But we can provide copies.

7 MR. MAY: Yeah. I mean, it's just helpful to be able
8 to follow around so we can flip back and forth, because I don't
9 have that comparative slide.

10 MR. BLOOM: Do you want me to go back to that one?

11 MR. MAY: Yeah. I mean, just for a second.

12 MR. BLOOM: Sure.

13 MR. MAY: So is that somewhere in the presentation
14 that I have, what you've submitted in the record?

15 MS. MOLDENHAUER: I believe the comparative slide is
16 part of our supplemental filing.

17 MR. MAY: Because that's what I'm looking at right
18 now, and I'm not seeing it.

19 Oh, wait a minute. Oh, there we go. Okay.

20 MS. MOLDENHAUER: Did you find it?

21 MR. MAY: Yeah, yeah. I found it.

22 MS. MOLDENHAUER: Yeah, the last page is
23 supplemental. SK-24.

24 MR. MAY: Yeah.

25 MR. BLOOM: Do you want me to continue?

1 MR. MAY: No, no. I mean, I have it. That's good.

2 MR. BLOOM: Okay. So here you see on this slide the
3 site plan on the left. The unique character of this building
4 is that there are three entrances to it on Rhode Island, New
5 Jersey, and S Street. There really is no rear in the
6 traditional sense, a rear elevation to this building. Every
7 elevation is prominent and visible to the wider public, I would
8 say.

9 On the right you see what is the typical floor plan.
10 There is an existing stair opening, basically, in front of the
11 New Jersey door entrance, which is essentially in the center of
12 the building. We are maintaining that stair opening, which
13 lends itself to dividing the building essentially in two, with
14 a unit on the Rhode Island side and then a unit on the S Street
15 side. And that organization is on all three floors, first,
16 second, and the additional third floor.

17 This is the basement unit. One of the issues brought
18 up at our last meeting was that we had an actual unit in the
19 basement. This is the unit that we have since removed. So as
20 last time we came here asking for seven units, we are now
21 asking for six units. And now the basement is a combination of
22 storage for the residents, bike storage, electrical room,
23 mechanical room, and those types of spaces.

24 Here you see a rendering of what the building
25 currently looks like. This is looking at it from New Jersey,

1 essentially, looking west.

2 So in terms of the addition, which you see here, now
3 looking down Rhode Island, regardless of what we do to this
4 building, we have to replace the roof structure. It has
5 undergone significant damage in the time that it's been
6 abandoned. It's been abandoned for several years now, and
7 there's significant water damage.

8 So the costs associated with essentially extending
9 the existing mansard structure is relatively minimal compared
10 to the payoff of having the two extra units up there.

11 And here again, you see another rendering showing the
12 addition from the New Jersey side. Again, the idea is that,
13 you know, we want this building to look like it's always been
14 there. We realize that whatever we do to this building, that's
15 the way it's going to look for decades to come. And we really
16 want to make sure that we do it right.

17 Another issue that was brought up last time was if we
18 could do a by-right third-floor addition where it was just 60
19 percent lot occupancy. This is just a quick overlay of what
20 that would look like on the third floor. This is another
21 version of it. In either of these versions, there is hardship
22 due to the existing stair location and how to configure the
23 usable space around that stair enclosure.

24 On just a purely aesthetical point of view, since
25 this building does not really have a rear side to it, and it's

1 exposed on three streets, cutting it back in any shape really
2 creates a very odd condition. This is not a typical row house
3 where you can just pull the rear back and no one really notices
4 from the front. But regardless of how you do it, you know, for
5 me as an architect, it creates kind of a funny situation.

6 And that sums up the changes we made from our last
7 meeting.

8 CHAIRPERSON JORDAN: Okay. Board, any questions of
9 the applicant? I do have some, but I want to make sure before
10 we leave off the architectural drawings, anything?

11 Yes, Mr. May?

12 MR. MAY: So, I was looking at your most recent
13 submission, which you've just guided us through. Hold on a
14 second, let me try to pull up the right page.

15 (Pause.)

16 MR. MAY: So, there's an image in here, it's on SK-
17 14, that's showing us an elevation, the lot next door? Is that
18 what it is, lot 10?

19 MR. BLOOM: Yes.

20 MR. MAY: Right. So on the left is lot 10. And it's
21 shown in the plans as a separate by-right development?

22 MR. BLOOM: Correct.

23 MR. MAY: And that's your development, though?

24 MR. BLOOM: Yeah. We bought both lots together.

25 MR. MAY: Right. And so, you're building a third

1 floor onto that house next door?

2 MR. BLOOM: Correct.

3 MR. MAY: And is that just going to be flats?

4 MR. BLOOM: It's a single-family home.

5 MR. MAY: Just a single-family home. Okay. And
6 where are you in getting that built?

7 MR. BLOOM: We've submitted for permit. We've
8 received some permit comments. And we're finalizing our
9 responses to those comments.

10 MR. MAY: Right. Okay. And is that an existing --
11 is it just an empty lot at this point? Or is it a --

12 MR. BLOOM: No. It is a two-story -- it's a small
13 two-story structure attached to the structure on lot 9.

14 MR. MAY: Right. Okay. So were those two originally
15 built together?

16 MR. BLOOM: Yes.

17 MR. MAY: And in the backyard, I mean, it's not very
18 deep. It's two to three rooms deep.

19 MR. BLOOM: Um-hm.

20 MR. MAY: Is there actually a small yard that you
21 have between it? I'm looking now at SK-13.

22 MR. BLOOM: Are you looking at lot 9 or lot 10?

23 MR. MAY: Between lots 9 and 10, toward the north
24 side.

25 MR. BLOOM: Yeah, there's a very thin strip of open

1 land on lot 9.

2 MR. MAY: On lot 9.

3 MR. BLOOM: By zoning regulations, it's 100 percent
4 lot occupancy because it's so small.

5 MR. MAY: Right.

6 MR. BLOOM: But there is a little bit of open space
7 there.

8 MR. MAY: Right. And you're relying on that to
9 provide windows to some of your rooms?

10 MR. BLOOM: There are existing rooms -- windows
11 there.

12 MR. MAY: I know there are existing rooms, but that's
13 your --

14 MR. BLOOM: Yeah.

15 MR. MAY: I mean, I'm looking at unit 6, which the
16 only window into the living room, dining space on unit 6 is one
17 small window that opens up onto that narrow rear yard.

18 MR. BLOOM: That is correct.

19 MR. MAY: Yeah. Well, that's not really what's
20 before us here. But you might take another look at that one.

21 MR. BLOOM: Yeah. That was an unfortunate
22 consequence of having to make the stairs to the roof deck
23 exterior. The whole unit used to be flipped so the living room
24 was on the right side.

25 MR. MAY: Yeah. Well, you know, or maybe it just

1 needs to be a one-bedroom unit with a big bedroom. Because,
2 you know, I can't imagine being a living, dining room, kitchen
3 space with a single window over the stove.

4 MR. BLOOM: Right.

5 MR. MAY: But that's not really what we're here to
6 decide. I'm just offering free advice.

7 MR. BLOOM: Appreciate it. Thank you.

8 MR. MAY: Take it for what it's worth, right?

9 So, you've now reduced this to six units in your
10 proposal. So I'm curious why you're going with a top addition
11 as opposed to living within the envelope that you have.
12 Because if you just had six units -- you know, going back to
13 your original proposal of eight instead of taking out the
14 basement units, why don't you take off the top floor?

15 MS. MOLDENHAUER: At the last hearing, Commissioner
16 Turnbull was on this case.

17 MR. MAY: Right. And I have reviewed the record
18 since then, so I'm taking it over from here. But anyway.

19 MS. MOLDENHAUER: So, he had actually indicated some
20 concerns as well as OP had regarding the previous condition of
21 the building in regards to some flooding that had occurred and
22 providing units in the basement. So it was actually a
23 response, kind of, in conjunction with dialog back and forth
24 with the board and OP.

25 MR. MAY: Okay. All right. So let's probe that for

1 a second. Is there a known water table issue with the basement
2 here? I mean, do you know that you have water seeping in
3 through the basement right now?

4 MR. EDGERTON: Mr. May, if I may. When we first came
5 to the property, there was water at times approaching knee
6 height.

7 MR. MAY: Right.

8 MR. EDGERTON: And it seemed like when we did our
9 test pits, water still at times would continue to rise. We are
10 still searching for that exact cause. We believe a lot of it
11 was due to roof damage. Also, with the original driveway
12 coming from S Street that went into the basement, I believe
13 that still may be kind of a chase for water to be making into
14 that basement.

15 MR. MAY: Um-hm.

16 MR. EDGERTON: We are not 100 percent sure yet
17 exactly what the water issue --

18 MR. MAY: So, originally you were confident that you
19 could make that waterproof and livable, right?

20 MR. BLOOM: Yeah, originally, as you know, we had
21 eight units. And the ability to put in eight units made the
22 cost of mitigating the water and making the basement habitable
23 bearable to the development.

24 MR. MAY: So what would you have had to do?

25 MR. BLOOM: Like Jimmy said, we haven't nailed down

1 the exact cause. But worse case scenario, we probably would
2 have had to replace most, if not all, of the slab, done French
3 drains on the inside and out, waterproofed the foundation
4 walls.

5 MR. MAY: I mean, you couldn't get away with just a
6 perimeter drain?

7 MR. BLOOM: It would be risky. I mean, obviously, we
8 don't want to have to come back and do something else a year or
9 two from now. You know, we want to make sure we get it right
10 the first time. Maybe. But I think it was a week maybe, and
11 we wanted to make sure we did it right.

12 MR. MAY: Okay. I'm not sure I would have pushed you
13 out of the basement, because it seems to me that's a fairly
14 reasonable strategy for getting the number of units you want.
15 But we'll put that off for right now.

16 That's it for my initial questions.

17 CHAIRPERSON JORDAN: Okay. To go back to my -- I was
18 looking at your financials, and I see that for your six units,
19 you're charging, you have included closing costs twice.

20 (Pause.)

21 CHAIRPERSON JORDAN: In the supplemental, I don't
22 know what exhibit that particular one is. The very last one,
23 yeah.

24 MR. EDGERTON: Chairman Jordan, are you talking about
25 the profit and loss analysis?

1 CHAIRPERSON JORDAN: Yeah. What am I missing here?

2 MR. EDGERTON: You mean starting with the last --

3 CHAIRPERSON JORDAN: You have a \$40,000 closing cost,
4 right?

5 MR. EDGERTON: No, I do not see --

6 CHAIRPERSON JORDAN: Profit and loss, six units?

7 MR. EDGERTON: Oh, I'm sorry. The first set of
8 closing costs, that is on the acquisition. The second set of
9 closing costs is on the sales.

10 CHAIRPERSON JORDAN: All right. So you haven't
11 purchased the property yet?

12 MR. EDGERTON: No, we have purchased the property.

13 CHAIRPERSON JORDAN: Okay. So the repay -- I always
14 have difficulties when we do -- I understand how it's done.
15 But I always have difficulties because we always repay
16 ourselves, but we also keep the asset. It's still a benefit to
17 the owner. So we pay the money, but you really kind of double
18 up on your money. Then you say that your return on investment
19 is X, Y, Z, but you haven't lost the other part of the money
20 that you've already maintained in the asset.

21 Just some theoretical kind of stuff. I think, in
22 fact, one of our applicants -- I mean one of the opposition had
23 that argument, which makes a lot of sense, you know. So you
24 pay yourself back, and then you claim that you're only going to
25 make \$91,000 profit, or 3 percent, right?

1 MR. EDGERTON: That's what's shown, correct.

2 CHAIRPERSON JORDAN: Right. But you still maintain
3 the asset, right?

4 MS. MOLDENHAUER: No. These are going to be condo
5 sales. So they won't be maintaining the asset at all.

6 CHAIRPERSON JORDAN: Okay. Right, right. Got you.

7 MS. MOLDENHAUER: In an apartment scenario that would
8 make -- that logic --

9 CHAIRPERSON JORDAN: Got you. Got you. Yeah.
10 That's right; these are condos.

11 I also was going to ask -- let me go back to the
12 other page. Where's my note?

13 (Pause.)

14 CHAIRPERSON JORDAN: Oh, I see it. Okay. I found
15 it. I was asking about the other comparables.

16 So, when you acquired this -- how long have you had
17 the property?

18 MR. EDGERTON: We settled the last day of 2013. So
19 just under a year.

20 CHAIRPERSON JORDAN: And when you acquired it, it
21 already had all this damage?

22 MR. EDGERTON: Correct. The damage was there. There
23 were issues in closing regarding title and uncooperative
24 current owners at that time. We were not able to fully see all
25 of the hardships that later became apparent to us in January

1 after settlement.

2 CHAIRPERSON JORDAN: All right. In comparison to the
3 other properties on your block, give me an example of how your
4 property is different, besides the internal water, the water
5 damage and the flooding downstairs.

6 MR. EDGERTON: Understood. This is a property that
7 is the only one on the block that abuts on three streets. It's
8 the only one that has, catty-cornered, two gas stations.

9 CHAIRPERSON JORDAN: Is it the smallest lot? No?

10 MR. EDGERTON: No, it is not the smallest lot. This
11 is kind of a funky lot to begin with. It's 508 North. It's
12 cut off from the rest of 508, based upon Rhode Island. They
13 are all -- this is the only lot on three streets, though. Most
14 of these lots do not have off-street parking.

15 The octagon shape and the three existing stairwells,
16 from the outside on S Street, New Jersey Ave and Rhode Island
17 Ave, of course, since no one on the other lots. But on three
18 streets, none of them have two grand avenues that they're
19 overlooking, and then overlooking the large intersection of
20 Florida Avenue and Rhode Island Avenue.

21 Also, we are almost completely surrounded, with this
22 lot, by C2A zones. While this entire lot itself is R4, most of
23 the surrounding areas are C2A.

24 CHAIRPERSON JORDAN: How long has the property sat
25 vacant?

1 MR. EDGERTON: My understanding from all the research
2 we could do was that it was at least six years, and potentially
3 longer, depending on the family situation previously.

4 CHAIRPERSON JORDAN: How are the other properties on
5 the block? Are they vacant? In the most immediate area.

6 MR. EDGERTON: I'm fairly certain that 90 percent of
7 the properties on the block are owned and lived in by
8 homeowners. One are two are rented. Most of them have been
9 renovated at this time.

10 CHAIRPERSON JORDAN: Okay.

11 MR. EDGERTON: May I add one more thing?

12 CHAIRPERSON JORDAN: Yes, sure, please.

13 MR. EDGERTON: We have one abutting direct neighbor
14 right behind us, Troy Rogers. There's only one lot that
15 actually -- because the lots go past directly from S Street to
16 Rhode Island, we only have one direct neighbor.

17 His name is Troy Rogers. He was not able to be here
18 today. He has been very supportive of the project. We reached
19 out to him even before closing to gauge his interest and to
20 understand that he was onboard with us, trying to make sure we
21 could take away the vagrants and the nuisance and the eyesore
22 that this had been to his abutting lot, and damaged his lot,
23 for some time.

24 CHAIRPERSON JORDAN: So the 20 letters that are from
25 neighbors, when you say you've only got one neighbor, where are

1 the other 19 from?

2 MR. EDGERTON: The other 19 are primarily within a
3 two-block radius to discuss, to be honest, parking issues with
4 the community was what they are most concerned about. And
5 that's what we had the bulk of our conversations with the ANC.
6 And in the end, we did receive ANC support through our parking
7 mitigation strategy.

8 CHAIRPERSON JORDAN: I know you argue title issues,
9 but I don't know if -- title issues. You can just kind of
10 close your eyes and grab property with title. What's unique
11 about the title issue?

12 MS. MOLDENHAUER: I think that, obviously, the issue
13 here was going to the history of the property and the delays
14 associated with acquiring a property. It goes to the challenge
15 and the practical difficulty of another potential buyer going
16 through the more arduous, more delayed process.

17 You know, obviously, being a real estate lawyer,
18 there are a lot of times when homeowners will be scared away
19 from, obviously, acquiring a property that has -- I believe it
20 was two short sales plus one short sale had a bank that
21 literally had gone bankrupt. And so it was locating that bank.

22 And so that's, one, a cost of delay from a
23 development perspective, because you're invested in a project
24 where you obviously cannot go forward, and you're looking to
25 pursue and develop a project, but you have to wait through all

1 of this time before you can go to closing. And in that
2 scenario, a lot of developers would pass up a deal like this
3 because they would say, "We don't want to wait all this time,
4 and we'd rather put our money in somewhere where we know we can
5 get through closing quickly."

6 Maybe Jimmy can talk a little bit about why he found
7 this property and why he liked it and why he was willing to go
8 through that longer process.

9 MR. EDGERTON: If I may, I actually lived one block
10 away from here for a period of time, on New Jersey and R
11 Street, so walking to the metro every day past this property or
12 biking by got to be quite frustrating.

13 I reached out originally, I believe it was in 2010 or
14 2011 to begin contact here. We had significant delays and
15 unique issues on this property, where I've had real estate
16 brokers who have been in the business for 30 years say this was
17 a unique situation to them.

18 I'll touch very quickly on the issues, which were
19 there was communication issues with a noncooperative owner from
20 there. There was confirming heirs and interest percent that
21 led me down outside of D.C. to go look at records, as well as
22 going down to the courthouse here. There was a divorce and a
23 marriage. It became a bit of a kind of a daily sitcom, you
24 could say. There was an elongated contract period. We were
25 under contract for almost eight to nine months to close.

1 And there was a double-short sale with, their first
2 lien had been subordinated by improper title work to second
3 position. That second lien had actually been sold. The entire
4 bank -- it was SunTrust -- had been sold to Bank of America in
5 the first lien, had gone completely bankrupt and had to be
6 chased down, though they were in incorrect positions. It
7 involved process.

8 CHAIRPERSON JORDAN: All right. Now, your
9 conditions, I understand -- going to have a covenant. I'm
10 trying to think how we deal with some of these conditions as we
11 have the first time homeowners. Do we put it in the condo
12 association requirement that they must provide -- here's what
13 happens.

14 Someone buys a condo, and they turn it over. Then
15 they get a car, right? And then they don't get the basis of
16 the incentive that you are doing for first-time buyers. How do
17 we work that out?

18 MS. MOLDENHAUER: Are you talking about the monetary
19 incentives for --

20 CHAIRPERSON JORDAN: All the incentives. I
21 understand how we're going to do a recording. But I'm thinking
22 maybe it's something that needs to be sure that they're in all
23 the condo docs, and that the association then is required to
24 pick up what your initial responsibilities are so that they go,
25 become kind of perpetual for any new condo owner, and put in a

1 condo package or something. I don't know. I'm just trying to
2 think through that.

3 MR. EDGERTON: Just to clarify, you're saying
4 basically in the condo operating budget, there would be a line
5 item for new buyers to receive some kind of stipend to keep it
6 rolling where there's the transportation?

7 CHAIRPERSON JORDAN: That's what I'm thinking. I'm
8 just trying to deal with that in my mind. Yes. That's the
9 question, yeah.

10 MR. EDGERTON: Not to be tongue in cheek at all, but
11 rising oil costs and being close to the metro might also be a
12 benefit. But I think we'd be very amenable to making sure the
13 condo can support and encourage any buyers to the property to
14 continue to use alternative methods of transportation.

15 CHAIRPERSON JORDAN: These are condos, right?

16 MR. EDGERTON: Correct.

17 CHAIRPERSON JORDAN: And I saw something about
18 residential leases.

19 MS. MOLDENHAUER: We have it in there just in case.
20 Obviously, what we were showing with the profit-and-loss
21 analysis was that the lease scenario was not viable and that
22 the reality of the marketing conditions would be that this
23 would be going to condo. In prior cases, the board has asked
24 for both alternatives. And so because of the way that the
25 application was structured, I felt that it was best to provide

1 language for both just in case for some reason the market
2 changed between now and when the building goes to market.

3 CHAIRPERSON JORDAN: Okay. So the covenant -- okay.

4 So then, are you amenable to make sure that the condo docs,
5 the condo association's bylaws require that any new buyer, that
6 the condo association -- I don't know how you could do that. I
7 guess that have to put that in their dues.

8 MS. MOLDENHAUER: Would you want it for a certain
9 period of time like the first five years? Or are you talking
10 about in perpetuity? I mean, I think that you could do it, you
11 could say, for the first five years. We could add a specific
12 line item to the condominium budget so that if there were ever
13 a transfer of ownership, that, in conjunction with any pro rata
14 condos par value fees that were paid, the HOA also contributed
15 a certain benefit such as line item three to a new homeowner.

16 But it would be the HOA's association, not the
17 selling owner.

18 CHAIRPERSON JORDAN: I got it. Well, see, here's --
19 I understand. Here's the problem. We're doing, we're talking
20 about how to mitigate the aspect of parking. And the building
21 doesn't go away in five years. And so, it's just kind of --
22 you know, we're real sensitive, as you know, about parking. So
23 how do you deal with new people coming in after five years, and
24 they say, "Oh, I'm getting a car. I'm going to do" --
25 whatever? Or do we need an incentive? It's not really that

1 big a lift for \$100 or -- what is it, \$100?

2 MS. MOLDENHAUER: It goes \$100, \$150 for Capital Bike
3 or \$200 for -- I mean --

4 CHAIRPERSON JORDAN: Maybe the first five years might
5 be okay. I mean, I'm just looking. And I'm probably talking
6 more theoretical than for the longer-term problem. We do have
7 folks --

8 MS. MOLDENHAUER: The prohibition, obviously, against
9 RPP and VPP would be in perpetuity for the life of the
10 building. So I mean, that, I think, protection is there. The
11 only question then is the monetary incentive. And we could put
12 it in for five years. And then at the option of the board to
13 vote to continue it.

14 And obviously, if the board is encouraging, they
15 would obviously, hopefully, then encourage to continue it at
16 such a minor cost, ensure for turnover for the board to
17 continue that after five years.

18 CHAIRPERSON JORDAN: Then the other question is the
19 enforcement of the RPP. What happens if I go -- well, we can't
20 get one? We go try to get one, you can't get one? You
21 shouldn't be able to get one.

22 Did we ever work on how these things are getting
23 monitored between Department of Transportation and DMV? You
24 know, we had them kind of up in the air when we had them here.

25 MR. MAY: It's not solved yet. But based on what the

1 Zoning Commission is doing with the regulations, I expect they
2 will solve it.

3 MS. MOLDENHAUER: Rats.

4 CHAIRPERSON JORDAN: Okay, because right now, it's --

5 MR. MAY: We're kind of getting ahead of them and
6 calling them on it.

7 CHAIRPERSON JORDAN: Yeah, yeah, because there's no
8 way that these things are really getting enforced.

9 All right. I'm just trying to -- I just want to be
10 sure we're not going to give parking an issue there. But
11 you've got all these neighbors who are supporting this.

12 From the board, any other questions we have?

13 MR. MAY: Yeah, just one more. There is or was a
14 driveway that went across in the public space in front of the
15 house. Is that gone?

16 MS. MOLDENHAUER: We've had extensive discussions of
17 DDOT, and it's part of their statement to us that that must go.

18 MR. MAY: Okay. So is it going? I mean, you're
19 telling us that DDOT is telling you it's going to go. You have
20 to tell me you are taking it out.

21 MS. MOLDENHAUER: The clients have identified that as
22 part of their budget cost.

23 MR. MAY: Okay. So it will be removed.

24 MR. BLOOM: Yeah. I don't think we're going to get a
25 permit from DDOT -- I don't think we're going to get DDOT to

1 sign off on the permit unless we do it. So.

2 MR. MAY: Okay. I think that's it for my questions.

3 CHAIRPERSON JORDAN: All right. Then let's turn to
4 the Office of Planning, and Ms. Thomas. You've heard a lot of
5 us talking. Anything for you to get changing? But go ahead.
6 Or do you need to add anything to your report? Or do you want
7 to expound on anything?

8 What are you doing way down there? You're like even
9 further away. Did you move?

10 (Laughter.)

11 MS. THOMAS: Yeah. I was sitting here when the other
12 cases closed.

13 CHAIRPERSON JORDAN: Yeah, okay.

14 MS. THOMAS: I just was too lazy to move.

15 CHAIRPERSON JORDAN: We don't bite.

16 MS. THOMAS: I don't have anything else to add. This
17 one is up to the board.

18 CHAIRPERSON JORDAN: Okay. Got you.

19 MR. MAY: Can I ask a question then? So, if they
20 were to propose six units and it did not include that third-
21 floor addition, would you support it?

22 MS. THOMAS: Yeah. Because it remains within the
23 structure.

24 MR. MAY: Within the structure?

25 MS. THOMAS: Yeah.

1 MR. MAY: So something that's within the existing
2 structure?

3 MS. THOMAS: Yeah. You know, their initial complaint
4 was that there was so much water. So we assume that if you're
5 in a water table, why would you put units within there. That
6 was the statement, right?

7 MR. MAY: Are they in the water table? I'm going to
8 ask the applicant.

9 The property that you own next door, which presumably
10 you bought separately, right? Or did you buy them at the same
11 time?

12 MR. BLOOM: We bought them at the same time.

13 MR. MAY: You bought them at the same time? So, well
14 anyway, was there water in that, too?

15 MR. BLOOM: Yes.

16 MR. MAY: And so, what are you planning to do there?

17 MR. BLOOM: I mean, it's a smaller structure, so it's
18 a little more easier to manage. There's less exposure to the
19 foundation walls.

20 MR. MAY: I can appreciate that. Just tell me what
21 you're going to do with it.

22 MR. BLOOM: But we'll probably end up putting in
23 French drains on both sides of the foundation wall. And
24 potentially, you know, removing the slab, putting in a new
25 slab, you know, with the proper drainage underneath it.

1 MR. MAY: It will be living space? But it's not
2 going to be a separate apartment?

3 MR. BLOOM: It will be living space. We're also
4 putting an addition on the back of that property so that some
5 of it will already be new slab.

6 MR. MAY: Okay.

7 MR. BLOOM: Property drainage.

8 MR. MAY: I mean, how far is that addition going? Is
9 it going to interfere with your lone window?

10 (Laughter.)

11 MR. BLOOM: No. The addition is shown on the plans
12 you have.

13 MR. MAY: Oh, okay. I didn't see an addition. I
14 guess I'll look more closely.

15 MR. BLOOM: It doesn't look like an addition.

16 MR. MAY: Okay.

17 MS. MOLDENHAUER: Gray structure.

18 MR. MAY: Oh, it's going all the way. It's covering
19 the entire property.

20 MR. BLOOM: No, no. The solid gray.

21 MR. MAY: The solid gray. So that includes the
22 addition.

23 MR. BLOOM: That includes it.

24 MR. MAY: Oh, okay. All right.

25 Ms. Thomas, were you finished? I kind of broke off

1 quickly to ask the applicant about the property next door. I
2 mean, is this a scenario where it's known that there are
3 flooding issues? I know the Tiber Creek doesn't run through
4 this area, and a lot of people blame the Tiber Creek for
5 flooding in other parts of the city.

6 MS. THOMAS: I'm not quite sure how far the flooding
7 along Rhode Island Avenue, the issues that they've been having.

8 MR. MAY: Right.

9 MS. THOMAS: I'm not sure how far down it goes past
10 that --

11 MR. MAY: But that's not a rising water issue.
12 That's a street flooding issue, right?

13 MS. THOMAS: Yes. That's a street flooding, water
14 rushing down from 1st Street, thereabouts. But that's been
15 taken care of with D.C. WASA's waterworks right now.

16 MR. MAY: Right. Right. Right. Because it seemed
17 to me that even if what was being proposed were three units
18 within the existing structure, and then going back to a small
19 penthouse scheme, to serve the deck and to get the stairway
20 out, that that actually might be more manageable.

21 I mean, I'm kind of in the same camp that you are
22 because I can see the need to do something different here,
23 given that you have a 1,600 square foot footprint. You have a
24 4,800 square foot building, therefore, which is not really
25 practical as a single-family home and it's not really even

1 great as flats and probably isn't going to sell as easily as
2 the one next door would as a single-family home.

3 But then the question is, what's the right solution
4 after that? And is it to go from the two units allowed to, you
5 know, six units? You know, that's probably the upper limit.
6 Eight was crazy-large. Six is really pushing it, given that
7 it's an R4 neighborhood and a lot of people are parking on the
8 streets and it has all of the characteristics of an R4
9 neighborhood which -- I mean, there's a reason why there's a
10 900-square-foot minimum for a conversion.

11 So anyway. All right. Thanks.

12 CHAIRPERSON JORDAN: Any other questions at all for
13 the planning board? The applicant, any questions for the
14 Office of Planning?

15 MS. MOLDENHAUER: No questions of Office of Planning.

16 CHAIRPERSON JORDAN: Okay. Where are we on DDOT?
17 Boy, it was so nice having DDOT here.

18 (Laughter.)

19 CHAIRPERSON JORDAN: We have a letter of no objection
20 from DDOT, but notes that the project is on an RPP block and
21 residents would be eligible for RPP. Okay. Thanks, we
22 appreciate that.

23 Anyone here from ANC 6E? 6E?

24 (No audible response.)

25 CHAIRPERSON JORDAN: We have a letter of support from

1 ANC 6E where they voted five to two in support of the
2 application. There's 20 letters of support from neighbors.

3 Anybody here wishing to testify in support of this
4 application?

5 (No audible response.)

6 CHAIRPERSON JORDAN: Anyone in opposition?

7 (No audible response.)

8 CHAIRPERSON JORDAN: Then we would turn it back to
9 the applicant for any rebuttal or closing.

10 (Pause.)

11 MS. MOLDENHAUER: At this time, we would just like to
12 provide a brief closing. As indicated, we believe that the
13 property exudes exceptional and unique circumstances. It's
14 located on the edge of an R4 district. Obviously, that, I
15 think, provides a unique situation.

16 While the character of the block to the west is
17 obviously very residential, really what the property is looking
18 onto is all commercial. It's on the edge. It looks onto, it's
19 really surrounded by Florida and Rhode Island, all of which are
20 C2A zones, surrounded by much larger density and a very wide,
21 heavily trafficked road and two gas stations on the other side.

22 The property exhibits an exceptional and unique
23 shape, the octagon shape, and the existing three sides all
24 providing a visual appearance and making a challenging effort
25 for it to comply with the setback requirements on the

1 additional third floor, which would be under the 40-foot
2 requirement.

3 CHAIRPERSON JORDAN: That's good.

4 MS. MOLDENHAUER: The existing dilapidated condition
5 and delays in the title are also exceptional and unique. And
6 the existing configuration, with the three doors and the
7 location of the existing stairwell and the desire to maintain
8 the existing joists and the majority of the existing property
9 while then renovating the property creates a layout challenge,
10 as indicated by our architect.

11 Those unique situations, I believe, create a
12 practical difficulty. Smaller units are more appropriate on
13 this site. Larger units would create a more practical
14 difficulty in regards to family-size units, in addition to the
15 location and the fact that the property has now offered the RPP
16 restriction for all individuals no matter what unit, obviously,
17 you obtain in the building.

18 The applicant has provided a detailed financial
19 analysis, which articulates the financial infeasibility of
20 trying to provide fewer units or a larger unit or even units
21 potentially in the basement or the top floor.

22 Currently, based on the current layout and
23 configuration, the applicant is showing that they are obtaining
24 a very reasonable to very modest, rather, return on this
25 project and that with ANC support, even OP's nonformal

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1 opposition, but statement, obviously, that it's left up to the
2 board, we believe, you know, that it's on the record that we
3 would not create a practical difficulty or an undue hardship to
4 the zoning plan.

5 We believe that under Palmer, this is an ideal
6 situation already, an ideal case that kind of falls right in
7 line with Palmer's concept of not allowing idle land to lay
8 idle. This property has been vacant for over six years. The
9 neighboring property owners are excited to see something happen
10 here. And this is a unique group of developers that are
11 willing to take on a project like this with this risk, and we
12 believe that the request that we're asking here is necessary in
13 order to bring this property back to residential use.

14 We also think that, obviously, the court of appeals
15 in Wolf have confirmed the ability to address the financial
16 feasibility issues and the practical difficulty as they are
17 stated here.

18 And we have outlined options one through seven, or
19 conditions one through seven, which are attached to our
20 Supplemental Exhibit F, and are willing to extend those
21 conditions to include condition three to be continued for a
22 five-year period and to be identified as part of the bylaws for
23 any transfer of ownership to be paid, have those incentives
24 paid by the HOA, or the condo owners association.

25 CHAIRPERSON JORDAN: I believe you can even charge

1 that back in the condo package costs, you know, something like
2 that.

3 MS. MOLDENHAUER: Based on the above, we'd like to
4 complete our testimony and ask the board to deliberate. Thank
5 you.

6 CHAIRPERSON JORDAN: All right.
7 Board, what's your feeling on this application?
8 Anybody?

9 MR. HINKLE: Shall we deliberate?
10 (Laughter.)

11 CHAIRPERSON JORDAN: Go ahead. Mr. Hinkle.

12 MR. HINKLE: Thank you, Mr. Chairman. I mean, I
13 think I discussed this at the last hearing. I'm not bothered
14 by the density, to be honest. The fact that this site is
15 almost completely surrounded by C2A, where you can have quite
16 high density and actually taller buildings really, I would say,
17 convinces me that a variance from the number of units
18 requirement is appropriate at this site.

19 I think the applicant has made their case in terms of
20 the uniqueness of the site, especially in terms of lot
21 occupancy. You have 100 percent lot occupancy. You have an
22 existing open court that doesn't meet the requirements. It's
23 basically impossible to park on this site. So I think that
24 variance is appropriate. That's my thought.

25 CHAIRPERSON JORDAN: I tend to agree with you. And

1 the property sits out kind of on an island. It's kind of a
2 different situated property, as I see, kind of removes itself.
3 Except for those properties right there on that little island,
4 it's really kind of removed from the residential neighborhood
5 per se, in my view.

6 Has anybody else got any input on this? Oh, good,
7 Mr. May, if you want.

8 MR. MAY: I don't know. This is tough. I'm not
9 bothered by the density either, but that's not really even the
10 question at this moment, because, you know, the fact that it's
11 across the street from C2A doesn't really mean very much to me
12 because that's the way it's mapped and, you know, you have to
13 live with the way things are mapped unless you want to do a map
14 amendment case.

15 And I actually think that might have been tried a few
16 years ago and didn't go anywhere for this property. And I just
17 have this vague recollection of that. If it wasn't this one,
18 it was one very, very similar to this in the same neighborhood
19 that was brought up and then -- and I'm talking, I don't know,
20 seven or eight years ago, something like that.

21 But I'm not sure that I would even support that it be
22 a C2A even if you did try to do a map amendment. You know, I
23 think it's relatively easy to make the case that it doesn't
24 make sense for this to be a single-family home or flats at this
25 time, given the size of it and given the configuration. It's

1 also easy to get to, you know, not being able to park on the
2 site. That's pretty obvious, and so on.

3 The difficulty I have is with the solution. I think
4 I can get as far as six units. Like the Office of Planning, I
5 would much rather have it be done within the confines of the
6 existing building. I am not persuaded by the economic
7 analysis.

8 I think that that's -- first of all, those are very
9 difficult to evaluate to begin with. And the mere fact that,
10 you know, the original testimony stated that with eight units
11 there was a 5.5 percent return, and then at seven units there
12 was going to be a 1.95 percent return, and now all of a sudden
13 we're at six and it's somehow manageable. I mean, I think that
14 I don't have the expertise to really evaluate those and see and
15 understand whether that really makes sense.

16 And I just don't -- I'm never comfortable when the
17 BZA is confronted with these kinds of arguments. I think that
18 it's just very tricky. But I think that on the strength of the
19 building itself, the way the building is -- not the three
20 doors; the three doors is a nonargument to me. But the size of
21 the building, the placement of the building, the way it fronts
22 the three streets argues for being able to convert it into
23 smaller units.

24 Certainly, the state of the neighborhood and the
25 proximity to commercial areas argues also for smaller units.

1 So, I mean, I guess I can get all the way there to what they
2 have proposed. I'm really not fond of just simply extending
3 the existing roof up the way it has been done. But if it's all
4 done very well, it will be -- it will look like it was
5 originally done that way, particularly with the building next
6 door.

7 And so, I'm going to remember your name.

8 (Laughter.)

9 MR. MAY: And if I drive by there in five years and
10 it looks like some of the pop-up architecture that we see
11 around Washington, I'll remember. So I think I can go. I can
12 support this.

13 CHAIRPERSON JORDAN: Ms. Heath?

14 MS. HEATH: I'm there. I'm in support of this, with
15 the proposed density, number of units.

16 CHAIRPERSON JORDAN: Make the motion. Jump in here.
17 Make the motion.

18 MS. HEATH: So I'll make a motion to accept the
19 variance request.

20 CHAIRPERSON JORDAN: And with the amended conditions.

21 MS. HEATH: Right. With the amended conditions as
22 reviewed.

23 CHAIRPERSON JORDAN: Wait a minute. I'm going to do
24 this. Second.

25 (Laughter.)

1 MS. HEATH: Your first.

2 CHAIRPERSON JORDAN: I feel relieved by getting the
3 opportunity to second something.

4 Motion made and second. Is there any further
5 discussion?

6 All those in favor of the motion, Aye.

7 (Chorus of "Aye.")

8 CHAIRPERSON JORDAN: Those opposed, Nay.

9 (No audible response.)

10 CHAIRPERSON JORDAN: The motion carries.

11 Mr. Moy?

12 MR. MOY: Yes, sir, staff would record the vote as
13 four to zero. It was on the motion of Ms. Heath, seconded by
14 Chairman Jordan. Also in support, Mr. May and Mr. Hinkle. No
15 other members present; the motion carries.

16 (Motion to accept the variance request with the
17 amended conditions for case number 18794 passed.)

18 CHAIRPERSON JORDAN: Thank you.

19 Thanks, everyone. And let's do a summary on this.

20 MR. MOY: Thank you.

21 CHAIRPERSON JORDAN: You know, sometimes I'm hesitant
22 in doing a summary when the Office of Planning recommends a
23 denial, so that we have a record on it.

24 MR. MOY: Interesting, interesting.

25 MS. MOLDENHAUER: It wasn't a formal recommendation

1 of denial. It was only a recommendation that they could not
2 support.

3 MR. MAY: Could not support. But I'm still inclined
4 to have some explanation of that.

5 CHAIRPERSON JORDAN: Okay. Let's have a full order.
6 In fact, we're going to ask the applicant to submit a proposed
7 finding of facts and conclusions for the board in light of our
8 discussion.

9 MR. MOY: Good. Very good. Thank you, sir.

10 CHAIRPERSON JORDAN: All right. So that would
11 conclude this matter. And yes, we appreciate it.

12 One other item of business for the board. Let me
13 read my month-end speech.

14 In accordance with section 405 of the Opening
15 Meetings Act of D.C. Code 2575C, I move that the Board of
16 Zoning Adjustment hold closed meetings on Monday, November 3rd,
17 and November 17th. These meetings will start at 4:00 p.m., are
18 held for the purpose of obtaining legal advice from our
19 counsel, and deliberated upon, but not voting on, cases
20 scheduled to be publicly heard or decided by the board on the
21 following day.

22 These cases are identified on the board's Public
23 Hearing Agenda for Wednesday, November 5th, and November 18th.
24 The closed meeting for this purpose is permitted under the
25 Administrative Procedural Act.

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1 Is there a second?

2 MS. HEATH: Second.

3 CHAIRPERSON JORDAN: Will the secretary please take a
4 roll-call vote?

5 MR. MOY: Yes, sir. When I call the board member's
6 name, if you would reply with a yes or a no.

7 Mr. May?

8 MR. MAY: Yes.

9 MR. MOY: Ms. Heath?

10 MS. HEATH: Yes.

11 MR. MOY: Chairman Jordan?

12 CHAIRPERSON JORDAN: Yes.

13 MR. MOY: Mr. Hinkle?

14 MR. HINKLE: Yes.

15 MR. MOY: And we have a board member not present.

16 Motion carries, sir.

17 (Motion for the board to hold closed meetings on
18 November 3 and November 17, 2014, passed.)

19 CHAIRPERSON JORDAN: All right. And then, as it
20 appears that the motion has passed, I request that Office of
21 Zoning provide notice of the closed meetings in accordance with
22 the Act.

23 Any other business?

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

25 CHAIRPERSON JORDAN: Well, I just want to thank

1 everybody for participating and being here today. It's a
2 little longer than what we do, but that's okay. Appreciate it.
3 Thanks. We're adjourned.

4 (Whereupon, at 2:03 p.m., the meeting was adjourned.)

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