

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 28, 2015

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 09:30 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
MARNIQUE HEATH, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

PETER G. MAY, Board Member (NPS)
ROBERT MILLER, Board Member
MICHAEL G. TURNBULL, Board Member (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LAWRENCE FERRIS, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
BRANDICE ELLIOTT
MATT JESICK
MEGAN RAPPOLT

The transcript constitutes the minutes from the
Public Hearing held on April 28, 2014.

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E-X-H-I-B-I-T-S

<u>Exhibits Nos.</u>	<u>Marked/Received</u>
37A Letter from Mr. Burns with comps	113/114
37B Matrix	113/114
37C Structural Engineer's Letter	113/114

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

(9:43 a.m.)

CHAIRPERSON JORDAN: And then we have some hearings, quasi meeting decision, in other things, so this docket is really a different docket to manage. With that, I'm going to say we're going to call 18943. Mr. Moy?

MR. MOY: Yes. All right. This is a continued hearing for Application Number 18943 of Myrtle Avenue, East German, and the Board last heard this at March 17th, I believe, 2015, and let me end there, Mr. Chairman.

CHAIRPERSON JORDAN: Please identify yourselves and make sure your microphone's on, please. Yes.

MS. BREVARD: Okay. I'm Gail Brevard. I'm ANC-5C01.

MR. CLAY: Good morning. Steven Clay, residing at 2606 Myrtle Avenue, NE.

MS. ADAMS: Janice Adams, residing at 2616 Myrtle Avenue, NE.

MR. NATHANIEL: Gabriel Nathaniel, managing partner with Myrtle 2610 Myrtle, LLC. Excuse me, 2608.

CHAIRPERSON JORDAN: You said Nathaniel?

MR. NATHANIEL: Gabriel Nathaniel.

CHAIRPERSON JORDAN: Okay. What did we do last time with this case? We did something. I think we continued this case. We took testimony from the Applicant, and we took testimony from the ANC, and I believe OP, but we did not take

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1 testimony for the community-at-large. We also continued this
2 in order for the Applicant to meet with the ANC, and so bring
3 me up on that. So has there been a meeting with ANC?

4 MR. NATHANIEL: Yes, there has been.

5 CHAIRPERSON JORDAN: Okay. And do we have a letter
6 from the ANC in regard to this?

7 MS. BREVARD: Yes.

8 CHAIRPERSON JORDAN: We do? From the full ANC vote in
9 regard to this?

10 MS. BREVARD: Yes.

11 CHAIRPERSON JORDAN: We do? It's not just the
12 single-member district. I'm saying the full -- so we do. Do
13 we have a letter, Mr. Moy, please?

14 MR. MOY: We have a letter from the ANC single-member
15 districts. That's under Exhibit 34.

16 CHAIRPERSON JORDAN: That's what I thought was --

17 MS. BREVARD: But the ANC, as a whole, 5C, we did vote,
18 I think it was in March.

19 CHAIRPERSON JORDAN: March? Give us a second, please.

20 MR. MOY: And I believe, Mr. Chairman, there's another
21 ANC report. Exhibit Number 30.

22 CHAIRPERSON JORDAN: All right. What about -- okay.
23 So that was March 11th. All right. So then we had a
24 subsequent meeting with the ANC and what happened? Well, we
25 had that meeting with the single-member district, is that what

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1 we had?

2 MS. BREVARD: Yes. And we could not come up with an
3 agreement because the --

4 CHAIRPERSON JORDAN: I read the letter. So I
5 understand what you're saying and I understand the kind of --
6 what appears to be the atmosphere of the meeting, and et cetera.
7 I picked it up through your letter. All right. So we're back
8 on for a decision for the -- those issues still remain to be
9 resolved by the Board. Before I go to additional questions,
10 let me ask Mr. Nathan, tell me, what was the condition of this
11 lot? Do you know what the condition -- was this lot a separate
12 lot to 1957 and were they owned by single ownership in 1957?

13 MR. NATHANIEL: Yes.

14 CHAIRPERSON JORDAN: Okay. And how do we know that?

15 MR. NATHANIEL: The records of the deed. The two lots
16 have always been under single ownership since early 1900s.

17 CHAIRPERSON JORDAN: And they've been separate lots?

18 MR. NATHANIEL: Separate lots under single ownership
19 since the early 1900s.

20 CHAIRPERSON JORDAN: Okay. So it's subdivided now.

21 MR. NATHANIEL: It's kind of confusing.

22 CHAIRPERSON JORDAN: Yes, it really is. That's why I'm
23 asking these questions.

24 MR. NATHANIEL: The Surveyor's Office has record of two
25 separate lots, however, they are combined for tax purposes

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1 under a record tax lot. So to answer your question, they are
2 not officially a combined lot because the lot number issues
3 to them is a record tax lot in the 800 series.

4 CHAIRPERSON JORDAN: Okay. And I'm trying to see where
5 we are. And you already started construction on this lot?

6 MR. NATHANIEL: Yes, but not to begin construction on
7 the new proposed single-family home. There was an existing
8 building that has been renovated.

9 CHAIRPERSON JORDAN: Board, if you have any other
10 questions, please feel free to ask the -- just last that thought
11 just that quickly.

12 ZC MEMBER MILLER: I have one question, Mr. Chairman.

13 CHAIRPERSON JORDAN: Yes, please, Mr. Miller.

14 ZC MEMBER MILLER: Thank you. Mr. Nathaniel, the ANC,
15 the April 13th letter that we received from ANC Commissioner
16 Brevard, 5C01, states that you stated at the meeting that you
17 all had together, that you already have a building permit. Do
18 you already have a building permit for this --

19 MR. NATHANIEL: Not for the new single-family home that
20 we're proposing. No.

21 ZC MEMBER MILLER: Okay. That was my question. Thank
22 you. And what's the existing structure that you did do
23 renovation of that's on this lot?

24 MR. NATHANIEL: It's a single-family home, similar to
25 the homes in the neighborhood, however, it has been renovated

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1 and updated.

2 ZC MEMBER MILLER: Is that the other one?

3 MR. NATHANIEL: Well, pre-tax record, yes, it's the
4 other lot.

5 CHAIRPERSON JORDAN: And so there's not another
6 adjoining vacant lot to this property, is there?

7 MR. NATHANIEL: Yes. The property that we are
8 renovating now is identified as, I believe, Lot Number 26 or
9 27. That lot, which is identified in the surveyor's map
10 adjacent to Lot Number 28, has a single-family home on it.
11 However, both of these lots are identified in the tax record
12 as a single lot under the Number 834.

13 CHAIRPERSON JORDAN: I'm just trying to figure out --

14 MR. NATHANIEL: So for tax purposes, these lots were
15 combined so that they received one tax bill, however, the
16 survey still has record that there are two separate lots.

17 CHAIRPERSON JORDAN: And let me turn to Ms. Elliott and
18 see -- I'm trying to understand. What's your view of this?

19 MS. ELLIOTT: Good morning, Mr. Chairman. So prior to
20 the last hearing, the Applicant did provide us with a copy of
21 the flat showing the two tax record lots. I'm sorry --

22 CHAIRPERSON JORDAN: Two survey lots.

23 MS. ELLIOTT: Two survey lots. Correct. And because
24 he was able to demonstrate that they were two pre-existing lots
25 prior to the adoption of the zoning regulations, we did

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1 actually change our recommendation from not able to support
2 to one of support, because they were pre-1958, in general, we
3 tend to support the development of vacant lots, you know, as
4 long as they were existing prior to the zoning regulations.

5 CHAIRPERSON JORDAN: But with any relief?

6 MS. ELLIOTT: Well, that was another question that we
7 had, and this was actually part of our supplemental report as
8 well, Section 401.2 allows for the development of an unimproved
9 lot provided that it meets 80 percent of the required lot width
10 and area. This one does. So there's a question as to whether
11 the relief is required, but then I posed that to the Applicant,
12 but he decided to go ahead and continue because he was already
13 in this process and just in case the Zoning Administration did
14 make a determination in his favor, he kind of wanted to already
15 -- he didn't want to lose additional time pursuing this.

16 CHAIRPERSON JORDAN: Okay. And that's your position,
17 Mr. Nathan?

18 MR. NATHANIEL: Yes.

19 CHAIRPERSON JORDAN: Board, any other questions of Mr.
20 Nathan? Additional questions of Office of Property? Anyone?
21 Okay. Then let's -- let me ask you, in regards to the
22 landscaping and the vegetation, what's going on with that?

23 MR. NATHANIEL: Currently?

24 CHAIRPERSON JORDAN: Yes.

25 MR. NATHANIEL: There hasn't been -- I mean, we have

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1 proposed vegetation and preserving existing vegetation as much
2 as possible. My colleagues have been in contact with the
3 neighbors and we're willing to, you know, provide any
4 vegetation that they feel necessary. I mean, at this point,
5 we're still in the construction phase, so that portion of the
6 project has not been finalized yet.

7 ZC MEMBER MILLER: I have a couple of additional
8 questions, Mr. Chairman.

9 CHAIRPERSON JORDAN: Please.

10 ZC MEMBER MILLER: The size of the house that you
11 renovated, is that similar to the size of the other houses on
12 the block?

13 MR. NATHANIEL: Yes.

14 ZC MEMBER MILLER: And is that --

15 MR. NATHANIEL: Well, I would say, in footprint, it's
16 similar, however, we did expand the second level and added a
17 small addition, maybe about less than 100 square feet to what
18 was existing, and then the proposed house will be similar to
19 that scope.

20 ZC MEMBER MILLER: And how much feet separates the house
21 that you renovated with the adjacent house on the other side,
22 and how much feet will be between the two houses that you own,
23 and how much feet will be on the side yard? I'm trying to get
24 the side yard, if the side yard is the same with the new house
25 being there.

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1 MR. NATHANIEL: Yes. We will maintain the 8-foot side
2 yard on all sides of each house, new and existing.

3 ZC MEMBER MILLER: Okay. Thank you.

4 CHAIRPERSON JORDAN: All right. Board, any other
5 questions of this Applicant? Yes. Please, Ms. Heath.

6 VICE CHAIR HEATH: One question for the Applicant, the
7 ANC-5C01 has -- you've seen their letter, correct?

8 MR. NATHANIEL: Yes.

9 VICE CHAIR HEATH: And you've seen the conditions by
10 which they want you to adhere. Let's see, they're requesting
11 that you -- in order to help mitigate the situation with
12 construction on your site, they are asking for environmental
13 study, they're asking that you preserve vegetation and
14 landscaping, and that you have an insurance policy. Are you
15 okay to agree to these, I don't know if they're really
16 conditions, but requests? Have you addressed these with the
17 single-member district?

18 MR. NATHANIEL: Yes. Our partners have agreed.

19 CHAIRPERSON JORDAN: Okay. Thank you.

20 CHAIRPERSON JORDAN: All right. Any other questions?
21 And what we're saying is, trying to work with the community,
22 although construction-related matters such as this is not
23 before this Board, nor do we have control or jurisdiction to
24 do that. However, one of the things I want to say to you as
25 I'm getting the flare of how this meeting has gone between the

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1 community and the Applicant is not something that makes us warm
2 and fuzzy.

3 As we've said over, and over, and over again, it's
4 important that people trying to seek relief try to work in good
5 faith with the surrounding areas, and communities, and
6 neighbors, and it's just important to this Board now. When
7 we hear contrary to that, it also gives us some concern about
8 whether or not the relief being requested is actually going
9 to have any impact on the community, and et cetera.

10 And it goes also for the community too. You know,
11 sometimes people, no matter what you do, the community is not
12 going to agree to it just because, not in my backyard, the whole
13 shebang, but it's better that people work things out because
14 they're going to be -- they may very well be neighbors, and
15 whether or not we grant the relief or not, that things are going
16 to have to exist after you leave this room.

17 So I want to certainly say this to this Applicant because
18 the letter that I got from single-member district just did not
19 show that this meeting was warm and fuzzy, but that's just one
20 side of it, and I know there's, like, three sides to every
21 story, so I just want to put that on the record regarding this.
22 Anyone wishing to speak in support of this application?
23 Anyone wish to speak in support? Anyone wish to speak in
24 opposition? Anyone in opposition? You guys already spoke or
25 do you not want to speak?

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1 MR. CLAY: I certainly want to speak in opposition.

2 CHAIRPERSON JORDAN: I thought that's why you came up
3 here.

4 MR. CLAY: Absolutely.

5 CHAIRPERSON JORDAN: It was like, going once, going
6 twice.

7 MR. CLAY: Thank you so much.

8 CHAIRPERSON JORDAN: All right.

9 MR. BIANCULLI: Simply put --

10 ZC MEMBER MILLER: Please identify yourself for the
11 record.

12 MR. CLAY: Oh, Steve Clay. I reside next door to the
13 house that's already been constructed. There's 8 feet between
14 my property and the newly-constructed home. I'm one of many
15 people who would be the custodian of what happens when they
16 leave. I'm here because there have been many opportunities
17 where we could have come to some accord. Development is going
18 to happen, change is constant, so I don't sit here to fight
19 for the sake of fighting.

20 I'm sitting here because we're part of a community,
21 overwhelmingly seniors, who can't get out, who could be here,
22 but who all have had issues with the manner in which we've been
23 addressed, in the manner which we've not been addressed, and
24 the fact that because we're so close to South Dakota Avenue,
25 there are issues of parking. There's issues of density.

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1 The house that they've constructed is 2600 square feet.
2 That's much larger than the homes on the block. The home that
3 they're proposing to construct is going to be 2300 square feet,
4 which is also much larger than the homes on the block. So what
5 you will have, in effect, will be a complete changing of what
6 currently exists. And what I think, because of the variance
7 that's been requested, crowding, and issues of whether or not
8 there will be parking; issues of the curb cut.

9 So I think that sort of summarizes at least why I'm here
10 this morning.

11 CHAIRPERSON JORDAN: What's the average square foot of
12 the houses on the street?

13 MS. BREVARD: About 1135.

14 CHAIRPERSON JORDAN: Anything else for us, Mr. Clay?

15 MR. CLAY: No. Thank you.

16 CHAIRPERSON JORDAN: Okay. Let me turn to Applicant
17 and ask him, so in comparison to your houses that you're putting
18 there, compared to the neighborhood, what's the comparison?

19 MR. NATHANIEL: Well, the footprint is very comparable.
20 Most of the houses in the community have very small second
21 levels, where the second levels exist within the roof framing.
22 Our proposal would be to expand that to create a traditional
23 second level with a standard roof, so that additional square
24 foot doesn't come from sprawl, if you will, it more or less
25 comes from the addition, or taking advantage of, the second

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1 level of the footprint.

2 CHAIRPERSON JORDAN: And the other houses in the
3 community are two levels.

4 MR. NATHANIEL: However, those --

5 CHAIRPERSON JORDAN: And you're just maximizing the
6 interior of the expansion of the second floor.

7 MR. NATHANIEL: Correct.

8 CHAIRPERSON JORDAN: Ms. Elliott, is that your
9 understanding of what's happening with this property and is
10 it consistent, in your view, with the other properties?

11 MS. ELLIOTT: Based on our analysis, the footprint does
12 tend to be fairly consistent with what we've seen on that block.
13 And relief for other -- for the construction of the dwelling
14 wasn't necessary, so it does meet all of the zoning
15 requirements in terms of side yard and rear setbacks, lot
16 occupancy, so in our view, it is compatible with the district
17 that it's proposed in.

18 CHAIRPERSON JORDAN: All right. Then let's go to our
19 next person who wishes to speak, please. Yes. I think you
20 are Ms. Adams?

21 MS. ADAMS: Janice Adams. Yes. I live at 2616 Myrtle,
22 so I am two to three doors down. I'm very concerned about the
23 environmental impact, particularly for our neighbor, who is
24 at 2612. He is housebound. He cannot be here to speak for
25 himself. He has invested thousands of dollars in his

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1 landscaping and in his property, particularly in waterproofing
2 his basement. It is imperative that there be an environmental
3 study that's done before there's any excavation to build a
4 basement and a foundation for this second house, even though
5 there will be 8 feet, even though there's vegetation, we are
6 on a watershed, and water in the basement is an issue in this
7 neighborhood.

8 So the environmental study done prior to any
9 construction is essential to us. In addition, the parking,
10 as Mr. Clay mentioned, is an issue. The houses across the
11 street do not have driveways, so those residents have to park
12 on the street. They park on both sides of the street. The
13 curb pad was going to take more street parking off, but it does
14 produce crowding, because now we have -- there's another house.
15 So those are, primarily, my concerns.

16 CHAIRPERSON JORDAN: And I read some of those same
17 concerns within the single-member district letter. The
18 problem is, this Board doesn't have control over the
19 environmental or the construction aspect of it, and I think
20 that's part of the, you know, lack of consolidation of
21 authority to deal with some of these things. There's other
22 D.C. departments that handle that, and I see that a lot. We
23 see that a lot. And it's part of what government should make
24 it easier for people to be able to voice their concerns, and
25 issues, and get it all resolved in one spot, and maybe that's

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1 something coming down the pipe, but the things that you have
2 identified is not before this Board.

3 And parking, they're not seeking parking relief to meet
4 the requirements for parking, so we could have grabbed that
5 one, but we just can't because they're not seeking parking
6 relief here. But we appreciate you coming. Ms. Brevard?
7 It's Brevard, right?

8 MS. BREVARD: Brevard. Yes.

9 CHAIRPERSON JORDAN: Yes. Please. Do you want to say
10 something else in regards to -- we know we have your letter
11 and anything else you think you might want to say?

12 MS. BREVARD: Nothing else to say.

13 CHAIRPERSON JORDAN: Yes, but we really appreciate you
14 all coming down and your diligence on this, and I just wish
15 that we could do something to help some of the things that you
16 talked about because you're living there. One thing that I
17 do know, took an observation, and Office and Planning, it does
18 seem like this house, these houses, are consistent with the
19 format of houses on this block, whether or not internally, it
20 has more square foot is something that is not really visible
21 by just looking at it.

22 But again, the Applicant, as we go through these things,
23 working with the neighbors in the community long before we get
24 here is where we really want you to be. Is there anyone else
25 wishing to speak in opposition? Anyone else in opposition?

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1 Any other questions? Yes, please.

2 ZC MEMBER MILLER: Thank you, Mr. Chairman. I just
3 wanted to ask Mr. Clay a question, clarification, just so I
4 understand what's happening on the block. So you're at 2606
5 Myrtle Avenue.

6 MR. CLAY: Yes.

7 ZC MEMBER MILLER: And the renovated house on one of the
8 lots is the house that you're next to, but not the vacant?

9 MR. CLAY: Correct. It's 2608.

10 ZC MEMBER MILLER: It's 2608, and then the vacant lot
11 is right beyond that one.

12 MR. CLAY: That would be 2610. Yes.

13 ZC MEMBER MILLER: Right. So we have testimony that
14 the size -- and from both the Applicant and OP that the side
15 yard requirements have been complied with, I think you even
16 said that the minimum 8 feet, beyond the minimum 8 feet, I'm
17 just wondering, is the structure at 2608 closer to you than
18 the structure on the other side of your house? I assume
19 there's a house at 2604?

20 MR. CLAY: No, there's a house on South Dakota Avenue
21 that is, their backyard is what is next to my home.

22 ZC MEMBER MILLER: I see. And how close is their
23 structure to your structure?

24 MR. CLAY: I would say 15 feet.

25 ZC MEMBER MILLER: And how close is the 2608? Is it

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1 probably about 16 feet, I guess, if they have their own side
2 yard or is it --

3 MR. CLAY: No. There's 8 feet between my house and
4 their property line, and there's a driveway, and so however
5 many feet the driveway is, is where their structure is, so 8
6 feet plus a driveway.

7 ZC MEMBER MILLER: Plus your 8 feet in terms of the
8 structure to structure.

9 MR. CLAY: My 8 feet, their driveway, and then the
10 house.

11 ZC MEMBER MILLER: Okay. I'm just trying to understand
12 how crowded it is, you know, it's going to be compared to how
13 it is and it doesn't sound, just based on that, it's necessarily
14 more crowded than the existing pattern of -- maybe I'm -- but
15 you've testified otherwise.

16 MR. CLAY: Yes. I feel very much otherwise. I think,
17 and perhaps, visually, it would, perhaps, present differently
18 if we had photographs, because I think it's clearer. I think
19 when we speak about it here, it sounds very different than the
20 reality that I think we'll be living with.

21 ZC MEMBER MILLER: Commissioner Brevard did provide
22 the, I think it was her photographs, so I think that was
23 helpful. And just one last question, Mr. Chairman, to the
24 Applicant. In response to Vice Chair Heath's question, you
25 said that your partners are agreeable, and this isn't before

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1 us, because these aren't conditions that we have jurisdiction
2 over, but you said your partners are agreeable to the
3 conditions that were requested in that ANC-5C01 letter, is that
4 correct?

5 MR. NATHANIEL: Yes.

6 ZC MEMBER MILLER: I would encourage you to memorialize
7 that agreement with your neighbors and with the ANC-5C01. We
8 can't necessarily make it a part of our proceeding, but that's
9 your testimony, and since you are going to be neighbors, or
10 whoever you sell it to is going to be neighbors, I really would
11 encourage you to memorialize that with your neighbors if you
12 are agreeable, since you have testified that you're agreeable
13 to them.

14 MR. NATHANIEL: Yes, noted. Thank you.

15 CHAIRPERSON JORDAN: Thank you. Any other person
16 wishing to speak in opposition? We would turn back to the
17 Applicant for any rebuttal. Anything else you think you need
18 to say to the Board?

19 MR. NATHANIEL: I'm fine. Thank you.

20 CHAIRPERSON JORDAN: Then we'll close the record.
21 Does the Board need -- well, let me first, does the Board need
22 anything else on this matter? Then we'll close the record on
23 this case. Is the Board ready to deliberate? Any thoughts?
24 Are you ready to deliberate or do you want to wait or something?
25 You're good? All right. So then I think we're ready to make

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1 a decision.

2 One of the things that happens, you know, we can take
3 judicial notice and take notice of various aspects, and
4 certainly, we took a look at the Google maps of the
5 neighborhood, took our own view of those things, and so I would
6 want that submitted on the record, that we took a look, a walk,
7 through the neighborhood and looked at the other houses, and
8 et cetera, on this street.

9 So with that, does the Board have a desire one way or
10 the other on this case? I think one of the things that's
11 helpful is that, I'm not even certain that you really need the
12 relief, but it's certainly borderline. I think you might have
13 already met the exception that you don't need to have this
14 particular relief. Anybody, thoughts on this; anything about
15 this project? All right.

16 Well, okay. All right. Oh, well, that being said, the
17 fact that this property is one of -- has a vacant lot, and
18 probably not capable of being subdivided, and it's something
19 that pre-existed prior to the zoning regulations going into
20 effect, and the lot is vacant, and it appears that it meets
21 all the other guidelines required for exceptional condition,
22 and is a practical difficulty that it cannot be subdivided,
23 and that it meets -- generally, it does mirror what's going
24 on with the neighborhood and community in regards to the size
25 and doesn't have any substantial impact on the community,

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1 although, there's questions raised about construction and
2 other things that's not before this Board.

3 And the recommendation of the Office of Planning
4 certainly is supporting this and believes that it fits
5 comfortably within the community, and it's not at odds with
6 the zoning regulation, then I would recommend that we support
7 the relief and the other basis of not accepting the ANC's
8 recommendation that voted in opposition, I think, 5 over 1 on
9 this is a fact that the ANC, which we certainly like to give
10 great weight to their recommendations.

11 In this particular matter, the ANC voted in opposition
12 based upon, mostly construction-related issues and issues that
13 are not before this Board, such as the environmental aspect
14 and parking, and parking relief is not before the Board.
15 There's no relief being requested for parking. And then the
16 water runoff and construction-related issues are not germane
17 to the relief being sought here by the Board, so we would
18 certainly want that noted on the record, the reason why we
19 didn't accept the ANC recommendation.

20 But that's my thought on it, not happy about the
21 community outreach, and et cetera, so that's my thought.
22 Anybody else want to weigh-in? Okay. So just leave me out
23 here by myself. So you want to make the motion?

24 VICE CHAIR HEATH: So I'm in agreement with you, Mr.
25 Chairman, and I have been concerned about the interaction

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1 between the Applicant and the community, but I -- given all
2 of the issues and the relief being requested, I feel like I'm
3 in a position to support the relief, so I will make a motion
4 that we approve the relief being requested.

5 CHAIRPERSON JORDAN: Anyone wants to second it?

6 BZA MEMBER HINKLE: I second.

7 CHAIRPERSON JORDAN: Motion made and second.
8 Additional discussion? All those in favor of the motion, aye.

9 (Ayes)

10 CHAIRPERSON JORDAN: Those opposed, nay. The motion
11 carries. Mr. Moy. Staff would record the vote as 4-0. This
12 on the motion of Vice Chair Heath, also supported, or rather,
13 seconded the motion, Mr. Hinkle, also in support of Chairman
14 Jordan, and Mr. Miller, we have Board seat vacant. The motion
15 carries 4-0. May I ask, did we include any conditions? Okay.
16 None. That's for the record then. Thank you.

17 CHAIRPERSON JORDAN: Okay. Thank you. Thank you all
18 for coming. Appreciate your input. Yes, that's right.
19 Thank you, Mr. Miller. Thanks for coming in. All right. So
20 let's look at Mr. Turnbull comes in. We're playing musical
21 Zoning Commission Members this morning. And we're welcoming
22 Michael Turnbull, Member of the Zoning Commission, who will
23 be sitting in on a few of these other cases. I guess the first
24 one there, is it 18884?

25 MR. MOY: Yes, that's it. All right. That would be

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1 Application Number 18884 of 1351, LLC. This is a continued
2 hearing from, I believe, March 3, 2015.

3 CHAIRPERSON JORDAN: Is that a continued hearing or a
4 decision? It was a continued hearing? Yes. Okay.

5 MR. MOY: Continued hearing, sir.

6 CHAIRPERSON JORDAN: All right.

7 MR. MOY: This was, I believe, Mr. Chairman, where the
8 Board closed the record and requested further information from
9 the Zoning Administrator about this plan.

10 CHAIRPERSON JORDAN: Right. Okay. So 18884, the
11 Applicant or anyone's coming for this case? Did we already
12 process this all the way through with -- we already processed
13 this, did we not? We went through everybody's testimony, et
14 cetera. We might have some questions for you. Identify
15 yourself, please?

16 MR. BELL: I'm Robert Bell.

17 CHAIRPERSON JORDAN: And you're the Applicant.

18 MR. BELL: I'm the Applicant.

19 CHAIRPERSON JORDAN: Okay. Board, we continue this on
20 to get some additional calculations from the Zoning
21 Administrator and the Office of Planning. Did I miss your
22 supplemental filing, Ms. Elliott, in this case? Let me go to
23 Office of Planning. Ms. Elliott, you did a supplemental
24 filing in this?

25 MS. ELLIOTT: I sure did, dated April 9th. I don't know

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1 the exhibit number, but that's when it was filed.

2 CHAIRPERSON JORDAN: Okay. Just summarize it for me.

3 MR. MOY: 78.

4 CHAIRPERSON JORDAN: Go ahead and summarize it for me,
5 please, because I think I --

6 MS. ELLIOTT: Well, there has been a lot of information
7 provided by both the Applicant and the parties in opposition
8 on this case, which has made it kind of difficult to sort
9 through what the relief is. So first of all, I appreciate you
10 allowing me the time to meet with the Zoning Administrator so
11 that we can clarify that for you. So there were two issues
12 at the last public meeting that the Board requested some
13 clarification on. The first was whether the meaningful
14 connection that has been proposed is actually, indeed, a
15 meaningful connection.

16 The second issue is that of FAR. Meaningful
17 connection, I'll tackle first, because that's the easiest.
18 The Zoning Administrator did determine that, because passage
19 is provided between the Georgetown Theater and Carriage House
20 in the proposed loggia, that it is a meaningful connection.
21 It generally, his interpretation is that as long as it's an
22 above-ground passage of a grade passage, that it meets that
23 requirement, and he also indicated that it tends to be -- that
24 that's consistent with other Board approvals where meaningful
25 connection has come into play at a Board decision. Excuse me.

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1 So the meaningful connection that's been proposed is
2 okay. It meets the requirement. The other issue is that of
3 FAR calculations, and what the neighbors did provide us with
4 prior to the public hearing, they noted that the FAR
5 calculations may not be consistent with the regulations. And
6 so that actually led to us filing a supplemental and going back
7 and forth a little bit. The Zoning Administrator has
8 clarified that, per a letter that was added to the file with
9 the original submission, dated June 27, 2014, that a total of
10 672 square feet can be transferred from the R-3 District to
11 the C-2A District.

12 That is, essentially, the cutoff on the FAR. In this
13 case, the Applicant actually took that 672 square feet, and
14 then because it was being transferred to the C-2A District,
15 he multiplied it by 2.5, which is the allowable FAR in the C-2A,
16 so he's getting over 1000 square feet in the C-2A District for
17 the addition that has already been permitted.

18 So that did affect our recommendation. The loggia
19 itself, it's not very large. It's only 317 square feet, but
20 because the lot has already, essentially, been overbuilt, we
21 actually found it very difficult to support the relief that
22 has been requested that would allow the additional floor area
23 in that 35-foot portion that is zoned R-3. So while we're not
24 supportive of that, you know, we did still offer an alternative
25 that the Board could consider if you thought that, you know,

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1 there was -- the project still generally met the requirements
2 of a variance and you wanted, you know, to explore some
3 alternatives.

4 If the Applicant were to narrow the loggia addition so
5 that it just meets ADA requirements, then the area that would
6 be added is about 100 square feet, which is less than the 317
7 that's been proposed, so that's up for your consideration, but
8 still, given everything that's in play, OP is not able to
9 support additional floor area because so much has already been
10 transferred to the C-2A portion.

11 CHAIRPERSON JORDAN: Okay. Good job. Thank you.
12 Board, any questions of Ms. Elliott?

13 ZC MEMBER TURNBULL: Yes, Mr. Chair, I just have one.
14 Ms. Elliott, you said ADA requirements?

15 CHAIRPERSON JORDAN: The width kind of --

16 MS. ELLIOTT: Yes, the width. I believe it's 36
17 inches.

18 CHAIRPERSON JORDAN: 36 inches?

19 ZC MEMBER TURNBULL: Well, does there have to be an ADA
20 requirement connecting to the commercial building?

21 MS. ELLIOTT: No, there doesn't need to be a connection.
22 In this case, the Applicant needs the connection so that the
23 carriage house can be converted into a residence and provide,
24 you know, bathroom and kitchen facilities, otherwise, the
25 carriage house could only be -- the uses are minimized and it

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1 could only be, like, an office, or storage, or some sort of
2 accessory use.

3 ZC MEMBER TURNBULL: Could you go back and explain the
4 ADA again? What are doing with the link? The link has to be
5 3-feet wide for --

6 CHAIRPERSON JORDAN: I think you just used that to say
7 -- to meet the requirements, but there are no requirements for
8 it.

9 MS. ELLIOTT: Right. There is no requirement for that
10 connection between the two structures.

11 ZC MEMBER TURNBULL: Oh, okay. I was --

12 CHAIRPERSON JORDAN: Or the ADA issue, right? You just
13 kind of used that.

14 MS. ELLIOTT: Right. We just wanted to make sure that
15 --

16 CHAIRPERSON JORDAN: They could get a wheelchair for
17 it.

18 MS. ELLIOTT: -- we had that on the table as an option
19 if you believe that this is a project that you want to see move
20 forward, but with less square feet.

21 ZC MEMBER TURNBULL: Okay. Thank you.

22 CHAIRPERSON JORDAN: But it has to at least be
23 functional otherwise it wouldn't be meaningful.

24 MS. ELLIOTT: Exactly.

25 CHAIRPERSON JORDAN: So, you know, whether it shoulders

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1 by or whatever you're going to do to get through it, I think
2 that's what you're talking about.

3 ZC MEMBER TURNBULL: Well, the latest plan that we've
4 got sort of shows, now, a stair going down and meeting the
5 commercial building, but now it looks like the doorway is --
6 it's kind of strange, it looks like it's in the corner in the
7 footing of the building, which doesn't seem like it really
8 works. I mean, it's just an architectural element, but it just
9 looks like it's a construct that somebody simply drew to say,
10 oh, here's the doorway, and it doesn't look like that's really
11 feasible.

12 I mean, it's an architectural issue, it's a construction
13 issue, but for me looking at it here as a Board Member, I'm
14 just confused as to what that really represents. And maybe
15 the Applicant can explain that.

16 CHAIRPERSON JORDAN: Yes, you want to answer that,
17 please?

18 MR. BELL: Sure. So speak about the --

19 CHAIRPERSON JORDAN: Where are you going?

20 MR. BELL: Oh, I'm sorry.

21 CHAIRPERSON JORDAN: Yes. Make sure your mic is on.
22 Did we identify yourself already this morning?

23 MR. BELL: Yes.

24 CHAIRPERSON JORDAN: Okay.

25 MR. BELL: The corner of that building is a little odd.

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1 The way I was going to do it was to use just the minimal amount
2 of structure there and I think that it could be done that way.
3 I could have widened it out slightly to adjust it. I was trying
4 to make it as minimal as possible because what I proposed as
5 way to accomplish a compromise here is, basically, a loggia
6 running between the two buildings.

7 CHAIRPERSON JORDAN: Let me do something about this
8 compromise thing. The Board doesn't have to compromise. I
9 just want everybody to understand that. That word's been
10 kicked around and kicked around, and the Board doesn't have
11 to compromise. Let's make sure --

12 MR. BELL: I understand that totally.

13 CHAIRPERSON JORDAN: Okay.

14 MR. BELL: It's your choice. You're the --

15 CHAIRPERSON JORDAN: No, it's come up several times and
16 --

17 MR. BELL: I'm just here proposing what I think would
18 be a good thing to do.

19 CHAIRPERSON JORDAN: Okay. All right.

20 MR. BELL: That's all I'm doing.

21 CHAIRPERSON JORDAN: Not just you, but it's come up a
22 couple of times.

23 MR. BELL: No, I --

24 ZC MEMBER TURNBULL: But, basically, your note on the
25 drawing says, "Provide new 3-foot door and stairs", so you're

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1 providing a 3-foot door into that building, bottom-line?

2 MR. BELL: Yes. That's the permit.

3 ZC MEMBER TURNBULL: Okay.

4 CHAIRPERSON JORDAN: So let me do something just in the
5 interim, because we're asking questions, the Board is asking
6 questions, any other questions you want to ask, Ms. Elliott?
7 Does the Applicant have any questions you want to ask Ms.
8 Elliott?

9 MR. BELL: Yes. So prior to the issue of the FAR issue,
10 it's my understanding that the Board -- or the Office of
11 Planning supported, basically, the concept and the proposal
12 by the Applicant. In their first presentation, they supported
13 it, and that the issue, from what I understand, boils down to
14 this question of that there may have been too much FAR given
15 to the main building.

16 CHAIRPERSON JORDAN: Is there a question in there?
17 You're asking a question.

18 MR. BELL: Okay. I'm asking a question. Is it not
19 true that the Office of Planning supported this proposal up
20 until the question of the FAR was raised?

21 MR. BELL: Yes. The Office of Planning did issue a
22 report recommending approval of this request. However,
23 challenges to this case actually, you know, required us to look
24 into this further and to request additional information from
25 the Applicant to address some of the issues of FAR. As noted

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1 in our supplemental report that was filed April 9th, we still
2 were supportive of the project and concept, but the issue that
3 the site is just simply overbuilt. And what has been permitted
4 is more than -- or what has been approved through the building
5 permit process is more than what's permitted by code.

6 MR. BELL: Can I ask some more questions of the Office
7 of Planning?

8 CHAIRPERSON JORDAN: Yes, please, as long as they're
9 germane.

10 MR. BELL: Okay. In a normal circumstance, an R-3 area
11 would allow 60 percent lot occupancy and three stories, is that
12 not correct?

13 MS. ELLIOTT: That is correct.

14 MR. BELL: And if that was applied to this R-3, wouldn't
15 it be substantially greater than both the carriage house and
16 the loggia?

17 MS. ELLIOTT: You have provided calculations
18 identifying that the area would be -- the area, by right, is
19 more than what has been requested.

20 MR. BELL: So isn't it true that if this building were
21 not built in Georgetown, the right to build on the R-3 would
22 be substantially larger than what's happened because of the
23 restrictions --

24 CHAIRPERSON JORDAN: We can't -- I don't think she can
25 answer that question. I mean, we have a whole lot of different

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1 zoning districts, and other measurements and requirements, and
2 so let's --

3 MR. BELL: Without a historic control on this lot, the
4 normal amount would be 60 percent of three -- three floors at
5 60 percent on the R-3 section of the lot, is that not correct?

6 MS. ELLIOTT: That is correct. The R-3 portion of the
7 lot is still subject to the regulations of the R-3 zone.

8 MR. BELL: Right.

9 MS. ELLIOTT: But what has happened in this case is
10 you've taken floor area that's permitted through 2415 and
11 transferred it to another part of the lot, so that's where the
12 relief is needed.

13 MR. BELL: Right. And in the calculations for that
14 transfer, those calculations were on the building permit,
15 which was approved, and upon which the property -- the
16 construction is presently proceeding, is that correct? Those
17 calculations were on the original signed approved documents.

18 MS. ELLIOTT: You have provided documentation showing
19 that the calculations that -- the calculations provided on the
20 permit were approved, but again, that's through a separate
21 process. That's not through --

22 MR. BELL: And it would be normal, if there was a
23 concern, for the Board of Zoning to raise that question that
24 there was an inappropriate calculation, isn't it correct?

25 CHAIRPERSON JORDAN: Inappropriate calculation by who?

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1 MR. BELL: If I make an application for a zoning
2 application and I show all the calculations that I've done,
3 and I say where the area is based on this --

4 CHAIRPERSON JORDAN: And so you're saying --

5 MR. BELL: -- it's been my experience that the Zoning
6 Department says no, you've calculated --

7 CHAIRPERSON JORDAN: You mean DCRA when they review
8 your plans.

9 MR. BELL: Yes. Exactly.

10 CHAIRPERSON JORDAN: You're saying they should have
11 called attack to you then.

12 MR. BELL: They should have told me, hey, you need to
13 reduce this. They shouldn't have allowed me to proceed to
14 build the building, to get the permit, and all that. All these
15 calculations were completely transparent. I thought I was
16 doing the -- perhaps I still believe I did them correctly. The
17 Zoning Department actually signed off on these calculations.
18 There was no duplicity about what they were based on.

19 CHAIRPERSON JORDAN: Okay. And they make mistakes all
20 day long. So why are we here today?

21 MR. BELL: We're here today because, in order for us to
22 -- in order to use the R-3 portion of this lot residentially,
23 instead of as a garage, it must be connected to -- or it must
24 be connected to the main building. And this request has two
25 aspects of it. One is, a special exception in order to cross

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1 the 35-foot area behind the building. That's a special
2 exception request.

3 CHAIRPERSON JORDAN: No, I understand all that.

4 MR. BELL: And the second is, once you receive that, you
5 have to have a rear yard exception, which you wouldn't have
6 to have if you didn't receive the special exception --

7 CHAIRPERSON JORDAN: I guess what I'm saying, we're
8 here because whatever error, whatever it went for, we realize
9 --

10 MR. BELL: Right.

11 CHAIRPERSON JORDAN: You realize that it was not
12 correct to --

13 MR. BELL: And since I've heard the calculation from Mr.
14 Grant, I have proposed a way in which I believe would meet the
15 criteria of not increasing any usable FAR, and yet, allow this
16 to be used as a residential area, which I'd like to explain, if
17 possible.

18 CHAIRPERSON JORDAN: You haven't finished the carriage
19 house, have you?

20 MR. BELL: No, it's under construction.

21 CHAIRPERSON JORDAN: Okay. How much under
22 construction?

23 MR. BELL: Well, today, the windows and doors arrived.

24 CHAIRPERSON JORDAN: And when did you get -- didn't you
25 get a stop-work order?

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1 MR. BELL: No.

2 CHAIRPERSON JORDAN: You didn't?

3 MR. BELL: There's never been a stop-work order on
4 anything.

5 CHAIRPERSON JORDAN: So how did this case get before us?
6 What made you come to the Board?

7 MR. BELL: I came to the Board because, in order to cross
8 the 35-foot --

9 CHAIRPERSON JORDAN: But you went ahead and started
10 construction knowing that you needed relief.

11 MR. BELL: No. If I'm not granted relief, I'll
12 continue to finish the building and finish the carriage house.
13 Those would be complete. The advantage of the relief to the
14 community and to the zoning is that then, the carriage house
15 will be used --

16 CHAIRPERSON JORDAN: In accordance with the zoning
17 regulations.

18 MR. BELL: Yes. And that was what the Old Georgetown
19 Board forced me to do. I could have built behind it normally,
20 but the -- and that's why it's a hardship situation. The Old
21 Georgetown Board said, look, we understand that there's a
22 zoning -- you know, that this is residential, but we want you
23 to preserve the historic building. Put your residence in the
24 historic building and that way you'll get a residence, we'll
25 get the preservation, and we'll have an open space. And that

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1 is why I came to you for that approach.

2 CHAIRPERSON JORDAN: Yes. I guess, so you know, I
3 asked the question because you were lining up some conversation
4 about errors made by the government in regarding the -- and
5 I didn't know if you were trying to look at some aspect of
6 detrimental reliance there, so I just wanted to get the record
7 straight, so we're okay.

8 MR. BELL: I think that's another issue to be addressed
9 appropriately.

10 CHAIRPERSON JORDAN: Yes. I didn't know where you were
11 going and I wanted to develop it, so any other questions of
12 Office of Planning?

13 MR. BELL: Yes, I do believe the government would be
14 estopped if this situation --

15 CHAIRPERSON JORDAN: Well, I don't know.

16 MR. BELL: That's my belief, again, as you say.

17 CHAIRPERSON JORDAN: Well, I hear you, but that's why
18 we're sitting -- I mean, that's why I was asking the questions.
19 Do you want to ask the Office of Planning any other questions?

20 MR. BELL: I notice that you still say that you support
21 the proposal because of all these positive aspects that it
22 would create, and you list them, you know, you listed that it
23 would rehabilitate the dilapidated structure, it makes the use
24 of it as a residence, which has minimal impact to the
25 surrounding neighbors and the existing landscape and screening

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1 activities are already addressed in many levels, including the
2 Old Georgetown Board requiring a landscape plan.

3 MS. ELLIOTT: Yes, the Office of Planning continues to
4 support the project in concept. Where we're at odds is its
5 compliance with the zoning regulations, which is often an issue
6 for us.

7 CHAIRPERSON JORDAN: No, I understand.

8 MS. ELLIOTT: I mean, we can look at a project and say,
9 wow, that's a really great project, but, you know, it's not
10 feasible, given the zoning regulations, and that's kind of
11 where we are.

12 CHAIRPERSON JORDAN: Got it. Okay. All right. Any
13 other questions you'd like to ask?

14 MR. BELL: Can I show the potential compromise?

15 CHAIRPERSON JORDAN: You can ask her whatever question
16 you want to ask that's germane to the relief being requested.

17 MR. BELL: So the Office of Planning, if the bulk of
18 usable -- the original request was for a bathroom, bedroom,
19 an entrance hall, and that was an obvious increase in the bulk
20 of the building. However, if there was an increase -- if there
21 was a way to not -- to connect it without having any usable
22 bulk added to the building, would this be something that the
23 Board might consider? The Office of Planning consider?

24 MS. ELLIOTT: The Office of Planning does not support
25 additional floor area on the 35-foot portion of the R-3 lot.

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1 Essentially, that area has already been transferred and an area
2 beyond what's permitted has been transferred, and we are not
3 supportive of additional square footage in that section.

4 CHAIRPERSON JORDAN: Okay. Does that end your
5 questions?

6 MR. BELL: Those are the questions.

7 CHAIRPERSON JORDAN: Okay. Then let's turn to the
8 party in opposition. Who's the spokesperson again?

9 MR. MULDER: Christian Mulder.

10 CHAIRPERSON JORDAN: Okay. Do you have any questions
11 of the Office of Planning?

12 MR. MULDER: Can I just approach with a question?

13 CHAIRPERSON JORDAN: Say your name again because I know
14 it's a continuation.

15 MR. MULDER: Christian Mulder. Like, at the present
16 moment, are we only supposed to ask questions?

17 CHAIRPERSON JORDAN: That's correct.

18 MR. MULDER: Okay.

19 CHAIRPERSON JORDAN: Of Office of Planning.

20 MR. MULDER: Of the Office of Planning.

21 CHAIRPERSON JORDAN: Correct. You don't have to if you
22 don't have one.

23 MR. MULDER: Yes, I clearly have. So have you looked
24 at other zoning violations for the theater building apart from
25 the transfer of the part of the building --

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1 CHAIRPERSON JORDAN: Have you looked at other zoning.
2 That's kind of an ambiguous question and it's also -- I don't
3 know if she can answer it. Why don't you ask another one.

4 MR. MULDER: Okay. let me be more specific. Like, in
5 our --

6 CHAIRPERSON JORDAN: And it needs to be germane to the
7 relief requested.

8 MR. MULDER: Yes.

9 CHAIRPERSON JORDAN: It's not, she's not doing zoning
10 enforcement. She's here talking about the relief being
11 requested, okay?

12 MR. MULDER: Yes. My question is, we made an argument
13 that the front building is a mixed zone building. If it's a
14 mixed zone building, it should actually have an occupancy of
15 only 60 percent. That's our understanding. Have you looked
16 at that? Is our interpretation correct or no?

17 MS. ELLIOTT: In the C-2A District, I believe -- no, I
18 always mix it up, so I have to look it up. 100 percent lot
19 occupancy is permitted, I believe, with commercial uses and
20 60 percent for residential.

21 MR. MULDER: And are you referring to 7721? Shall I
22 read it?

23 MS. ELLIOTT: So the exception in that is -- yes, in
24 772.1 it says, "A commercial district, no building on portion
25 of a building devoted to a residential use, including accessory

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1 buildings or excluding hotels, et cetera, can be in excess of
2 the percentage of lot occupancy in the following table." So
3 in the C-2A District, it says 60 percent, but the previous
4 passage specifies it is per residential use, so commercial use
5 can still have a lot occupancy of 100 percent.

6 MR. MULDER: But doesn't it say no building or portion
7 of a building devoted to residential use? Because, I mean,
8 my reading would be that when -- I'm not the zoning expert,
9 but if you -- for a commercial purpose, I mean, you don't need
10 outside space. If you're a resident, you need breathing
11 space, you need outside space. So for me, like, a zone is you
12 devote part of the building to a residential purpose, you want
13 breathing space, and that's how I read this. So I think --
14 no?

15 If our reading would be correct, how -- sorry.

16 CHAIRPERSON JORDAN: I understand where you're going
17 with the question, but that aspect of the relief is not before
18 us, and I think that might be a zoning enforcement issue. I
19 understand clearly where you're going because he's trying to
20 make the connection, trying to have one building, so you're
21 saying a portion of it is being used for resident. I
22 understand that. And her response is, as it sits right now,
23 it's not connected to a residential building. He's requesting
24 the ability to make it residential, but he hasn't passed that
25 threshold, right? Right. So that's where we are.

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1 MR. GALLAGHER: But he is adding four residences to the
2 building; the commercial building, on top of it.

3 CHAIRPERSON JORDAN: Well, we're still looking at that
4 building as -- he's adding residence on there?

5 MR. GALLAGHER: Four.

6 CHAIRPERSON JORDAN: Okay. All right. So that's the
7 argument. Okay. Got you. All right. Next question.

8 MR. MULDER: Okay. Have you looked at the impact of the
9 privacy, on our privacy, of both the augmentation to the front
10 building and the use of the carriage house as a residence? In
11 other words, like, because, I think, in the drawings that Mr.
12 Bell provided the last time, he showed that the carriage house
13 was much lower than it is. So have you looked at the fact that,
14 from the carriage house, you can look into the gardens of Mr.
15 Gallagher and Tom Adams?

16 MS. ELLIOTT: The Office of Planning has reviewed all
17 of the images that have been provided by both the Applicant
18 and those in opposition. And we still -- development isn't
19 always invisible and there's always going to be a certain
20 degree of impact, it's just whether that is actually
21 detrimental to you. We believe that what has been proposed,
22 and in this case, mind you, the carriage house is existing,
23 except for a small addition that's on the side of it, but the
24 height, the overall height, isn't changing.

25 So based on our review, we think that it's actually

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1 fairly compatible with what's in that neighborhood, but that
2 doesn't necessarily that it's not going to be visible.

3 MR. MULDER: But it's becoming wider, right, which
4 means that the proximity of the part that is exceeding our
5 garden walls is coming much closer, and hence, the angle of
6 people being able to look in our gardens, it's much more in
7 your face.

8 MS. ELLIOTT: That portion of the development is
9 actually by right and has not -- does not need relief.

10 CHAIRPERSON JORDAN: And see, I want us to get back to
11 where we are talking about the relief and the R-3 portion here,
12 and that rear yard. That's where he's seeking relief.

13 MR. MULDER: Yes, but what I want to establish is the
14 extent to which, kind of, what's going on, no? I mean, like,
15 this is the extent of what's being built. I mean, right in
16 our face, a building that is as big as five of our houses.

17 CHAIRPERSON JORDAN: Are we still talking about the C-2
18 building?

19 MR. MULDER: Yes.

20 CHAIRPERSON JORDAN: I understand where you are. I
21 understand that. The C-2 building is not in front of us.

22 MR. MULDER: But the point is, this is adding insult to
23 injury because --

24 CHAIRPERSON JORDAN: Okay. I'm going to ask you just
25 to move on to your next question.

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1 MR. MULDER: Okay. In terms of parking, I mean, I want
2 to establish very clearly, I mean, did the OGB order the
3 elimination of parking?

4 MS. ELLIOTT: I was not present for the OGB hearing and
5 I can't really attest to what was ordered.

6 MR. MULDER: And is it a right of the OGB to order
7 elimination of parking?

8 CHAIRPERSON JORDAN: That's not within her purview to
9 be able to respond to.

10 MR. MULDER: Okay. In terms of the -- our reading of
11 the historic zoning code is that if you add -- if there's an
12 addition to the use, you don't need to provide parking for it,
13 but when you take away -- but that doesn't give you the right
14 to take away parking. Is our reading of that correct and have
15 you looked at it?

16 CHAIRPERSON JORDAN: Let me ask you, how is the parking
17 issue germane to the relief he's requesting when he's not
18 requesting, before this Board, parking relief?

19 MR. MULDER: Because the current residential lot is
20 being used as parking. The carriage house served its original
21 purpose as not to park carriages anymore, but to park cars.
22 So kind of -- so what he's doing is like it used to be, like
23 a space where, in total, about seven to nine cars were parked.
24 Now, as we read it, there is a massive intensification of the
25 use of the front building, but because it is historic district,

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1 he doesn't need to add more parking spaces, but our reading
2 is, that doesn't mean he can take away parking spaces.

3 CHAIRPERSON JORDAN: Okay. I hear you. I understand
4 what you're saying. Let's move on. I'm not finding it
5 relevant to this conversation for the relief that's requested.
6 The relief requested, he is trying to expand and extend the
7 bulk from the C-2 to the R-3 District so that he can then convert
8 the carriage house and have a residential use for the carriage
9 house, as well as an exception, a variance, for rear yard
10 requirements. That's what's before the Board.

11 You may have other issues with the other pieces of the
12 property, or he might have other zoning violations. This
13 Board is not going to render a decision on that because it's
14 not before us. You can file a complaint with the Zoning
15 Administrator who does enforcement.

16 MR. GALLAGHER: Okay. Could I add one point, please?
17 There is a fire restriction on a residential lot on a 10-foot
18 alley. Now, in this case, there is a 10-foot alley --

19 CHAIRPERSON JORDAN: Wait, wait, wait, we are just
20 getting this thing so out of hand. I have to have some type
21 of order and process in order that we move this along in an
22 orderly fashion that we can prepare the proper record, that
23 we are here to the requirements of hearings, which has a certain
24 progression. We are at the point, as we are sitting here right
25 now, at a cross-examination, or questions, allowed by the party

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1 opponent of the Office of Planning, not argument.

2 MR. GALLAGHER: Okay.

3 CHAIRPERSON JORDAN: Okay.

4 MR. MULDER: We understand.

5 CHAIRPERSON JORDAN: And I think we already went
6 through a whole aspect of having everybody actually put on
7 their case and we just came back with some supplemental. And
8 that supplemental is being controlled by the Board. I asked
9 Ms. Elliott some questions in regard to her supplement of her
10 supplement report, because this thing has been -- this thing
11 has gotten really crazy. There's been an OP report and then
12 things changes, and there was a supplemental report, and then
13 things changed and there's another supplemental report.

14 So all we've done, and all you're going to be able to
15 do at this point, is ask questions of Ms. Elliott, because
16 that's the only other person I asked to provide us direct
17 testimony, okay? And so I'm allowing you, or you have the
18 opportunity, to ask questions of Ms. Elliott regarding what
19 she has placed in her supplemental report, because that's all
20 we've talked about, when we first came back out.

21 And I think this thing has been before us at least three,
22 four times. I don't think I've had any other case that lasted
23 this long. And so we have to provide some structure. And you
24 know what else we're going to do? We're going to close this
25 at some point, either today, if we have to stay here tomorrow,

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1 but this case is going to get closed. It's been here -- hell,
2 it's been here four times, right? At least four times. Okay.
3 And there's other cases on the docket, not that we're not going
4 to give it the concern and attention that it needs, but come
5 on. All right.

6 This is not open Pandora's Box and say that the door is
7 built sideways and -- it's not before us. The things that
8 we're going to talk about is what's before us. His attempt
9 to expand the -- carry the bulk from the C-2 over to the R-3,
10 to use the carriage house in a residential fashion, and getting
11 an area variance in regards to rear yard. That's the silo.
12 It kind of reminds me of that movie, Hitch, or whatever it was,
13 he told the guy to dance, but this is where he's going to stay.
14 That's where you stay. And so questions of Office of Planning,
15 please.

16 MR. MULDER: I understand your exasperation. I hope
17 you understand ours.

18 CHAIRPERSON JORDAN: Well, this is what I understand.
19 I understand this is new to you and people who come here with
20 experience -- this is just new, and I understand that, and so
21 I want you to understand I do understand that this is new and
22 you're doing the best you can, but in that regard, I'm trying
23 to help you stay within the framework so you can do the best
24 for what you need to be doing.

25 MR. MULDER: But my understanding is that if there is

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1 a meaningful passage, then it becomes a residence. If it's
2 a residence, there's no parking. So that was the point that
3 I wanted to establish and I wanted to know whether you have
4 taken that into account or not.

5 MS. ELLIOTT: Relief for parking was not requested, so
6 we did not review it with this application.

7 MR. MULDER: Okay. Was the fire issue was a part of
8 your review or no?

9 MS. ELLIOTT: No, that would be part of the DCRA's
10 review.

11 MR. MULDER: Okay. Can I ask my -- any other questions?

12 MR. GALLAGHER: The only concern is the loss of privacy
13 in our yards due to the additional residence in the back, and
14 the views into the houses, not particularly our houses.
15 Unfortunately, Mr. Tucker, himself, could not be here today,
16 but the carriage house will look directly into his houses on
17 O Street, and that is a big concern. There have been proposed
18 trees, and which, trees are a nice thing to have, but we're
19 worried about the big tree as well. There's a big concern
20 about the privacy.

21 MR. MULDER: Yes, I have -- if you look at --

22 CHAIRPERSON JORDAN: Wait, wait, wait. See, here we go
23 again. All right. First of all, I said there's going to be
24 one spokesman for the opposition, and we're now doing whatever
25 you want to do. Is there anymore question you have about --

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1 Mr. Mulder, any questions you need to ask? And you two can
2 talk, whatever it is, we're going to take an eight-minute
3 break, you can talk, make your list of questions, give it to
4 him, let's get it done. It needs to be germane within --
5 remember, right here.

6 MR. MULDER: I have one final question.

7 CHAIRPERSON JORDAN: No, you're going to write it down,
8 we're going to come back in eight minutes, and we're going to
9 resolve this, okay? I mean it, because I've been giving you
10 a lot of leeway. We have to move on and we got to do it in
11 the order -- I know there's a lot of things on your mind and
12 there's other avenues, but we don't have that type of authority
13 to go on certain things that you're asking about. All right?
14 Eight minutes. Thanks.

15 (Whereupon, the foregoing matter went off the record at
16 10:52 a.m. and went back on the record at 11:01 a.m.)

17 CHAIRPERSON JORDAN: All right. Any other questions
18 that you need to ask?

19 MR. MULDER: Yes. Final question.

20 CHAIRPERSON JORDAN: All right. Is your mic on?

21 MR. MULDER: No, sorry. A final question, did you look
22 at the fact that, sort of, because of this relief, it would
23 be a residence, that the floor of the residence would be
24 lowered, the basement floor, and that that might kill the tree,
25 and therefore, have impact on privacy of the neighbors; to kill

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1 that huge, old tree?

2 MS. ELLIOTT: That particular aspect was not analyzed
3 as part of this relief.

4 MR. MULDER: Okay. Thank you.

5 CHAIRPERSON JORDAN: All right. So then we will turn
6 to the Applicant for -- did we have rebuttal last time? We
7 did. We've already been through this thing. It's just that
8 we asked for some additional information, so there's no
9 rebuttal because there's actually the direct testimony of
10 Office of Planning, so with that, is the Board ready to
11 deliberate? We're going to close the record. Anything else
12 the Board needs on this matter? We're going to close the
13 record? Wow.

14 All right. So we're going to close the record and bring
15 the evidence portion of this to a head. Is the Board ready
16 to deliberate, or you need more time, or what do we need to
17 do here? Okay. I take it that means we want to go ahead and
18 deliberate. Anybody want to begin talking about this?

19 Well, I believe that I can't support the relief being
20 requested. I think that we've shown -- well, one, I can't even
21 believe that a lot of this is based upon the weight and
22 credibility of what's been submitted to this Board that there's
23 a lot of conflict that I would have with some of the
24 calculations, and but for going back to the Zoning
25 Administrator and others, and I think there's a lot of things

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1 going on. We now realize, certainly, that this area's
2 overbuilt.

3 I think that there's been a showing of a substantial
4 impact on the surrounding community, that it's just too
5 congested in the back there. There's questions in regards to
6 the plans as submitted, would be highly visible and encroaching
7 on the neighbors, and I just think that it's an
8 over-saturation, and there's been an improper attempted use
9 of additional allowable area, square footage, to use, which
10 has already been used, and that's kind of double-dipping.
11 That's just my thoughts on it. Anybody else? Please, feel
12 free.

13 ZC MEMBER TURNBULL: Mr. Chair, I would agree with your
14 comments and I want to thank Ms. Brandice meeting with the ZA
15 and going through and actually clarifying. I mean, I think
16 she brought up, to me, a lot of issues that we had concerns
17 about, and I think she's -- with Mr. Legrand's explanation and
18 her -- I think her comment -- and I agree. I don't think we
19 could support the additional relief for requested in the R-3
20 area. I would be opposed to this then.

21 CHAIRPERSON JORDAN: Any other thoughts? And with
22 that, then I move that we deny the relief requested in 18884.

23 ZC MEMBER TURNBULL: Second.

24 CHAIRPERSON JORDAN: Motion being seconded.
25 Additional discussion? All those in favor of the motion, aye.

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1 (Ayes)

2 CHAIRPERSON JORDAN: Those opposed, nay. The motion
3 carries. Mr. Moy.

4 MR. MOY: The staff will record the vote as 4-0. It was
5 on the motion of Chairman Jordan to deny the application for
6 the relief requested. Second was Mr. Turnbull, also in
7 support, Vice Chair Heath and Mr. Hinkle. We have a Board seat
8 vacant. The motion to deny carries, Mr. Chairman.

9 CHAIRPERSON JORDAN: Thank you all for coming. Thank
10 you very much. Ms. Elliott, again, thank you for sticking with
11 us in that. Let's keep rolling, 18915.

12 MR. MOY: All right. This is also a continued hearing.
13 Application 18915, Aminta, LLC. The Board last heard this at
14 its hearing on April the 7th, 2015. The Board requested
15 additional information, Mr. Chairman, in your case records
16 under Exhibit 41.

17 CHAIRPERSON JORDAN: Okay. Let's introduce ourselves
18 again, please.

19 MS. MOLDENHAUER: Good morning, Chairman, Members of
20 the Board. My name is Meredith Moldenhauer from the law firm
21 of Griffin, Murphy, Moldenhauer & Wiggins on behalf of the
22 Applicant.

23 MR. GOINS: I'm Jeff Goins from PGN Architects.

24 MR. FUENTES: Samuel Feuntes, represent the Applicant.

25 MR. VOYLES: Hi, my name is Ty Voyles. I'm a

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1 residential realtor.

2 CHAIRPERSON JORDAN: Okay. We had this case and we
3 heard it on, I think, April 7th. Then we asked for additional
4 information, any other design alternatives, and financial
5 information, and the Applicant provided us with that
6 information. So I think we went through -- we completed the
7 hearing, so does the Board have any questions on the
8 supplemental information you want to ask the Applicant? For
9 instance, the -- you submitted, I guess, you rely on financials
10 saying that this is an FHA. If the alternatives were used,
11 we couldn't make this FHA financial-wise and so forth.

12 MS. MOLDENHAUER: Well, I did not -- Ty's here to answer
13 those questions. I've also provided his resume to the Board
14 to be qualified as an expert.

15 CHAIRPERSON JORDAN: We do. I have it.

16 MS. MOLDENHAUER: It's part of the supplemental
17 information.

18 CHAIRPERSON JORDAN: Okay. Let me pull that up.

19 MR. VOYLES: The clarification there, is --

20 CHAIRPERSON JORDAN: Give me one second.

21 MR. VOYLES: Sure.

22 CHAIRPERSON JORDAN: And he's being proffered as an
23 expert on what?

24 MS. MOLDENHAUER: Residential real estate broker.

25 CHAIRPERSON JORDAN: And so we're talking about

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1 property values and sales, is that his area?

2 MS. MOLDENHAUER: The ability to market and sell
3 properties, yes.

4 CHAIRPERSON JORDAN: Did I miss that? Did I miss -- I
5 guess what I missed, I didn't see, I'm going to make up.
6 Anything that talked about the real estate license and
7 brokerage? Is that in the resume? Did I miss it?

8 MS. MOLDENHAUER: I mean, Ty's here, he can answer where
9 he's licensed and brokeraged.

10 CHAIRPERSON JORDAN: Yes, because it's not in the
11 resume, right?

12 MS. MOLDENHAUER: It's not in his resume. You're
13 right.

14 CHAIRPERSON JORDAN: Okay. I thought I was still
15 woreout from the last case. So let's talk about your
16 professional licensing.

17 MR. VOYLES: Sure. My name is Ty Voyles. I'm a
18 licensed realtor in the District of Columbia. My license is
19 hung with the brokerage of Keller Williams Capitol Properties.

20 CHAIRPERSON JORDAN: All right. So did you say you're
21 a broker?

22 MR. VOYLES: No, sir. I'm a licensed salesperson.

23 CHAIRPERSON JORDAN: And how long have you been a
24 licensed salesperson?

25 MR. VOYLES: For six years.

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1 CHAIRPERSON JORDAN: Okay. Have you given any
2 previous testimony or served as an expert any other cases?

3 MR. VOYLES: This is my first testimony before the
4 Board.

5 CHAIRPERSON JORDAN: Okay. And you've been -- you said
6 six years?

7 MR. VOYLES: Yes, sir.

8 CHAIRPERSON JORDAN: Okay. All right. I'll give it
9 some leeway. Let's just take what he is. I don't know if I'm
10 declare him an expert, but let's go ahead and give him the
11 ability to go forward. I don't know, unless the Board feels
12 contrary, because I don't know if we really met that threshold
13 yet. Okay. Go ahead. Please.

14 MR. VOYLES: Sure. So the clarification here, my firm
15 is a team of 12. We have seven licensed realtors. We sell
16 about 130 properties a year. The majority of those are in
17 Capitol Hill, where the Applicant's property is proposed.
18 About 60 percent of those every year. In doing so, we work
19 with a number of buyers who obtain financing for the purchase.
20 Not all of them purchase cash. Not all of us have bags of money
21 like that.

22 The hardship that is being discussed here is the ability
23 to actually obtain financing through a traditional lender in
24 order to increase the marketability of these. The majority
25 of loans that buyers take out are with both FHA, like you said,

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1 as well as Fannie Mae and Freddie Mac, underwritten loans.
2 Those make up about 90 percent of the loan origination market.

3 One of the qualifications for obtaining a loan like that
4 in a condominium building of this nature is that 25 percent,
5 or less, of the square footage be designated retail or
6 commercial in a mixed use development. So the proposal as it
7 stands now, meets this requirement. If there were changes or
8 reductions to the proposal, to the FAR specifically, this
9 threshold would be crossed. It would eliminate about 90
10 percent of the funding available to prospective buyers, that
11 would thereby decrease the buyer pool substantially.

12 CHAIRPERSON JORDAN: By what percentage?

13 MR. VOYLES: By what percentage? Well, I mean if 90
14 percent of the loans are underwritten by Fannie Mae, Freddie
15 Mac, and FHA, then we would be looking at about 90 percent
16 reduction in the loans that could be applicable to this
17 property.

18 CHAIRPERSON JORDAN: Are you sure about that?

19 MR. VOYLES: I'm 100 percent sure.

20 CHAIRPERSON JORDAN: I don't know if that directly
21 follows that, but go ahead. Anyway. I don't think they
22 necessarily -- but anyway, go ahead. I'll take it for what
23 it's worth. Go ahead.

24 MR. VOYLES: Okay. Thank you. The --

25 CHAIRPERSON JORDAN: Because that can just be preferred

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1 method of financing and not the required method of financing,
2 isn't that correct?

3 MR. VOYLES: That is correct. There are different
4 financing standards for different loan products. That said,
5 moving into loans outside of those three major underwriters
6 and purchasers, the lending restrictions become much greater,
7 the costs to the borrower, the buyer, becomes much greater as
8 well, thereby, decreasing the ability to purchase.

9 In doing so, we create an economic hardship on the seller
10 that is multiple-fold, but it decreases the buyer pool to an
11 increased sales cycle factor. Those increased sales cycle
12 will result in longer time on market, results in a larger
13 project cost, a larger holding cost, for the applicant.

14 ZC MEMBER TURNBULL: Wouldn't that support the
15 proposition that this application goes beyond the reasonable
16 development of this property, that asking to do all these
17 things, the 16-1/2 percent additional FAR, really goes beyond
18 what could be reasonably developed for this site, that this
19 is really beyond scope, because you're asking for, I would
20 assume these are very expensive condos.

21 MR. VOYLES: The market rate on these condos is in line
22 with other projects.

23 ZC MEMBER TURNBULL: Like \$300,000, \$400,000?

24 MR. VOYLES: About \$300,000 for a one-bedroom.

25 ZC MEMBER TURNBULL: For a one-bedroom, and \$400,000

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1 for two bedroom?

2 MR. VOYLES: A little bit more than that.

3 ZC MEMBER TURNBULL: A little bit more than that.

4 MR. VOYLES: It would be a market rate. Yes.

5 ZC MEMBER TURNBULL: And I'm seeing that your fees, the
6 association fees for this, are 130, 135 percent more than
7 what's in the market now. This is an expensive building.

8 MS. MOLDENHAUER: Can you explain the challenge of why
9 the fees are so high due to the unique shape of the project
10 and the high core factor?

11 MR. VOYLES: I do. I think that makes a lot of sense.

12 CHAIRPERSON JORDAN: Was that a question or just a
13 statement?

14 MS. MOLDENHAUER: It was a direction for the witness.

15 MR. VOYLES: This building is proposed on an
16 irregular lot. It holds a common core of 27 percent, I
17 believe, is the correct calculation, which is much larger than
18 other condominium projects proposed in the neighborhood or
19 built in the neighborhood.

20 ZC MEMBER TURNBULL: Which again, supports the idea
21 that this probably beyond the scope of what should be done to
22 that property.

23 MR. VOYLES: I respectfully disagree. I would
24 actually say that it requires additional units as opposed to
25 requiring the limiting of the units. If you were to limit the

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1 units, you would actually increase those condo fees because
2 you have --

3 ZC MEMBER TURNBULL: You've got rooftop units. You're
4 building a high-end building here.

5 MR. VOYLES: Agreed. And if they were built to --

6 ZC MEMBER TURNBULL: What's that doing for the
7 neighborhood?

8 MS. MOLDENHAUER: Can I ask, though, the witness finish
9 stating -- I mean, he's trying to answer the question.

10 ZC MEMBER TURNBULL: Sure.

11 CHAIRPERSON JORDAN: I got you. Yes, go ahead.

12 ZC MEMBER TURNBULL: Yes, go ahead. Finish.

13 MR. VOYLES: Thank you. So if you were to build as a
14 matter of right, you would build six to seven units, and you
15 would, thereby, increase the condo fees again by an additional
16 60 percent, so we're talking about increasing them --

17 ZC MEMBER TURNBULL: And how do you do that?

18 MR. VOYLES: Because the operating costs of the
19 building --

20 ZC MEMBER TURNBULL: But you got large units, so the
21 operating costs would go down.

22 CHAIRPERSON JORDAN: Mr. Turnbull --

23 ZC MEMBER TURNBULL: Sorry. I'm just trying to --

24 CHAIRPERSON JORDAN: I know. I got you.

25 ZC MEMBER TURNBULL: He's not clarifying as he talks.

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1 MR. VOYLES: The operating costs would actually remain,
2 essentially, the same. The replacement costs would remain the
3 same for the building as well. You still have a very similar
4 number of windows, you have the same size roof, you have similar
5 common elements in general, those are now spread over six to
6 seven units, as opposed to ten units. We ran very detailed
7 calculations on how those do change and the correlating
8 increase in expense is 60 percent in moving from six or seven
9 units to ten units.

10 So you, thereby, decrease the marketability again by
11 limiting the number of units in the building, or decreasing
12 the number of units in the building.

13 ZC MEMBER TURNBULL: Well, thank you, and I have issues
14 with some of these comments.

15 CHAIRPERSON JORDAN: No, no, if you want to -- please,
16 feel free to ask him whatever you need to ask him.

17 MR. VOYLES: Yes.

18 CHAIRPERSON JORDAN: I just wanted to make sure he had
19 a chance to --

20 ZC MEMBER TURNBULL: No, he can say his comments. I
21 just have a feeling that this is still going way beyond what's
22 going to be acceptable for this property, and especially for
23 what's being proposed.

24 CHAIRPERSON JORDAN: And so your supplemental, and
25 alternative design, basically, still derives upon the

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1 financial aspect of this property, the numbers, is that
2 correct, Ms. Moldenhauer?

3 MS. MOLDENHAUER: Yes. We review the project and in
4 working with both Ty, his company, and other banks and
5 institutions, we have presented that there are no other
6 feasible alternatives that would not require relief, that
7 could be proposed here, that would not have the practical
8 difficulty that was just testified to in regards to the
9 inability to market those.

10 CHAIRPERSON JORDAN: But you didn't provide
11 financials, did you? Did I miss those in your supplemental?

12 MS. MOLDENHAUER: No, our financial is based on the
13 inability to market these to the pool of buyers that are out
14 there, and as testified to, could reduce the ability to market
15 these no matter what the project. If you cannot sell the units
16 in the future due to the fact that the condo fees are so much
17 greater than other projects in the area, due to the core factor,
18 and if you cannot find buyers to buy, that they cannot go the
19 traditional 90 percent, Fannie Mae, Freddie Mac, you know,
20 purchase route, that creates a practical difficulty.

21 CHAIRPERSON JORDAN: I could buy it cash myself.

22 MS. MOLDENHAUER: Obviously, but the question is,
23 you're reducing the number of buyers and so that is creating
24 a practical difficulty.

25 CHAIRPERSON JORDAN: By how much? I mean, how do we

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1 reduce it? What's the percentage of number of buyers we reduce
2 it? No, I understand what he said. Here's the problem I'm
3 having, we asked for the financials, you kind of wager a hat
4 on taking a shot of this kind of testimony in lieu of what the
5 Board was asking for, financials with the alternatives,
6 looking at the various numbers so we could spread it out, take
7 a look, have a whole kind of conversation, and I'm just saying
8 that to you so that, understanding where the Board very well
9 may be, what we ask for, I don't know if we got. That's my
10 only concern.

11 MS. MOLDENHAUER: Can I just address that?

12 CHAIRPERSON JORDAN: Yes, go ahead. Please.

13 MS. MOLDENHAUER: In ALW, at the end of the case, the
14 Court of Appeals does state that the Applicant cannot, as a
15 practical matter, improve the lot in any way that would enable
16 him to realize income or sell it to a purchaser for value. And
17 so here, yes, you're asking the first half of that question
18 that the Court of Appeals identifies, realized income, but the
19 Court of Appeals identifies that there is also the practical
20 difficulty of the, or, sell it to a purchaser for value.

21 And what we have presented to the Board here is, we
22 believe substantial evidence to show that there is a practical
23 difficulty that is associated with the shape and topography
24 of the lot due to the high core factor from the condo fees and
25 then due to the mixed use nature. The property has currently

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1 existing non-conforming residential FAR, and so that's an
2 existing condition, it's a commercial lot on Pennsylvania
3 Avenue, to have a mixed use project here and bring the
4 residential in, you cannot provide that with the complying with
5 the FAR requirement under zoning.

6 The additional FAR requirement is needed in order to
7 market these units and create, as the Court of Appeals said,
8 be able to sell it to a purchaser for value. And that's what
9 we are presenting in regards to the Fannie Mae, Freddie Mac
10 limitations here in the mixed use requirements for obtaining
11 financing.

12 CHAIRPERSON JORDAN: I don't think we said anything
13 inconsistent with what you're saying. I'm saying, you relying
14 on that aspect of financing for this project and there's other
15 aspects of being able to buy these units, or purchase these
16 units, or finance these units anyway. So you're relying on
17 -- I'm just saying there's other alternatives and I just don't
18 know where the Board is on it, but there are other means and
19 so we have to see where we are in deliberating.

20 Board, any other questions on this? Anybody? Anybody
21 need to hear anything else from anybody else? Mr. Turnbull,
22 please.

23 ZC MEMBER TURNBULL: Well, you know, and we've never
24 seen any alternate plans, nothing was ever provided. I mean,
25 they've talked about, well, we looked at it and we can't do

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1 it. We've never seen anything. We got a token gesture of IZ
2 at 80 percent AMI, which I don't want to go down that road,
3 but that's often referred to yuppy-affordable housing, but I
4 mean -- I'll take that back, but I don't see a great benefit
5 by giving this amount of FAR for the neighborhood, what's
6 coming back.

7 We're getting very expensive housing and the FAR, with
8 the restaurant guiding as the primary driver on this, and I
9 can't see the housing aspect, other than it's housing, being
10 a big driver. And again, and the financing has really not
11 convinced me yet, as you said, Mr. Chair. I haven't seen
12 enough here to really convince me to go forward on this.

13 MS. MOLDENHAUER: Can I ask a question of the witness
14 that might provide some additional information?

15 CHAIRPERSON JORDAN: I don't -- yes, go ahead.

16 MS. MOLDENHAUER: In a year, or in a general period of
17 time, when you're looking at buyers, how many, in your
18 professional opinion, or in your opinion, when you're looking
19 at buyers, how many of them pursue a non-traditional,
20 non-Fannie Mae, Freddie Mac loan?

21 MS. MOLDENHAUER: I would say in the last three years,
22 the 300 transactions that we've done, less than 10 percent have
23 been non-Freddie, Fannie, FHA conforming loans or have been
24 direct cash purchases. Direct cash purchases are most
25 typically reserved for properties that are more expensive than

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1 a loan will allow for, so we're looking at \$1 million and up
2 for most cash purchases.

3 The District specifically offers a program called the
4 D.C. Opens Doors, which is a loan program that would actually
5 be targeted to this building very well, that does provide the
6 ability to purchase, but must be compliant with Fannie,
7 Freddie, and FHA underwriting guidelines.

8 CHAIRPERSON JORDAN: Okay. So, Board, anything else
9 you need? So then we can close the record on this?

10 MR. COCHRAN: Excuse me, sir, did you want the Office
11 of Planning to respond to the additional plan?

12 CHAIRPERSON JORDAN: No, not necessarily. Did you --
13 not really. I mean --

14 MR. VOYLES: Could I provide a brief closing?

15 CHAIRPERSON JORDAN: I think we already went through
16 all that, didn't we, and then we asked for additional
17 information? That's where we are, on the additional
18 information. We already had a hearing on all of this, right?
19 Am I right or wrong? And so we are just drilling down on this
20 other question. Mr. Cochran, is there something you want to
21 add that we -- we didn't get a supplemental report from you?

22 MR. COCHRAN: No, sir.

23 CHAIRPERSON JORDAN: Okay. Then please, go ahead and
24 comment on it.

25 MR. COCHRAN: Okay. We found the additional

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1 information to be somewhat troubled. The Applicant chose to
2 present one scenario, which it had not presented before, for
3 a condominium regime. The Applicant's practical difficulty
4 argument hinges on this being a condo, rather than a rental
5 unit, which, they have not explored what their difficulty would
6 be in developing this as a rental unit. If, by some chance,
7 you decide to approve this, we've checked with OAG and you could
8 possibly make it contingent on -- the approval of the building
9 permit, contingent on it being a condo since they have
10 presented that as their argument.

11 Our main concern is not so much the impact on the
12 neighborhood as it is the impact on the zoning regulations.
13 If you're looking at a by-right development here, you're
14 looking at 2.5 FAR and 60 percent lot occupancy. Because the
15 Applicant has gotten ten units by going to 3.5 FAR, they are
16 now getting 80 percent lot occupancy. So they're getting a
17 much larger project than would be allowed by right, and then
18 they're getting, of course, the public space.

19 We just find it to be too large a building for the zone,
20 especially given that the Applicant hasn't demonstrated that
21 they couldn't develop this practically under another scenario.
22 It's almost like they've chose to -- they know what they want,
23 and so now let's look at the zoning regulations to help justify
24 us to get there, as opposed to, here's what the zoning
25 regulations are, what can we develop within that? Oops, we

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1 can't, so we need to ask for some relief on this.

2 To Office of Planning, it undercuts the integrity of the
3 zoning regulations to take this approach.

4 CHAIRPERSON JORDAN: Okay. Cross of planning?

5 MR. VOYLES: You said that we had not provided any
6 alternative scenarios, did we not describe, at the last
7 hearing, the practical difficulty associated with building a
8 partial floor, and that alternative scenario and practical
9 associated with that?

10 MR. COCHRAN: You described a scenario, I don't think
11 you established a practical difficulty, but that's my opinion.
12 On the other hand, you did get asked to provide additional
13 information to help establish a practical difficulty, so
14 perhaps you didn't.

15 MR. VOYLES: I was asking about the scenario. Did we
16 walk through an alternative scenario, was my question.

17 MR. COCHRAN: You did. What you didn't do with that
18 scenario is mention that your lot occupancy would likely go
19 down to 60 percent for the residential because you would then
20 not, presumably, be able to fit in the IZ unit, which would
21 still undercut the whole project as you've conceived it.

22 CHAIRPERSON JORDAN: Okay. Any other additional
23 questions, Mr. Moldenhauer?

24 MS. MOLDENHAUER: No other questions.

25 CHAIRPERSON JORDAN: Board, any other questions of

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1 Office of Planning? All right. Then we will close the -- any
2 other documents or anything you need to see? Then we will
3 close the record based upon what we already have in the record.
4 Is the Board ready to deliberate, needs more time, another day
5 or something? Okay. All right. So we can deliberate then.
6 Anybody have any thoughts on this?

7 ZC MEMBER TURNBULL: Well, Mr. Chair, I'll start off,
8 I think Mr. Cochran has reiterated what we've said from the
9 beginning, and what he has said from what the Office of Planning
10 has presented, and I think he's done a very good explanation
11 of it, and I think that your comments on what we've already
12 received, and what we have received raises some grave doubts
13 in my mind as to being able to approve this.

14 I mean, in one way, I hate to do this in one sense,
15 because as a project in the city, but at the same time, I think
16 we've got to look at what we're getting by doing this, and I
17 think Mr. Cochran is really right. This is going beyond what
18 the zoning regs -- I think his explanation was very well, that
19 we've got a project that was sort of like designed and then
20 come back, oh, well, the zoning regs don't meet it, and it's
21 sort of like backing into the zoning regulations and backing
22 into how you design a project, and so I would be voting against
23 this.

24 CHAIRPERSON JORDAN: Any other thoughts, anyone?
25 Okay. Well, here's the problem I'm having, and from the last

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1 hearing to this hearing, I kind of -- certainly, have gone back.
2 Here's my problem, and I think we try to talk about it and try
3 to get to it by requesting this information, I hear what the
4 Applicant has to say and what the Applicant has said to the
5 Board are conclusions and summaries, but the Board needs the
6 information itself so it can resolve the issues itself, it can
7 interpret the evidence and say, oh, there are no alternatives.
8 We looked at three different sets and they are exactly right.

9 Set number 1, set number 2, set number 3, it just doesn't
10 work. We weren't presented that in this case. We're
11 presented what the conclusion of that and, Board, you
12 understand that this is what we're saying. In our opinion,
13 it does not work, but the Board has no foundation to rely on
14 any opinions because we have not seen the evidence that
15 supports the opinion.

16 There's no alternative plans that have been submitted
17 to the Board that shows that the configurations, yes, they're
18 still going to have -- he changed this, not only the core
19 factors going to be 23 percent, it's going to be 752 percent.
20 We haven't seen that. We've only received the summary of that,
21 or the opinion of that, without the supporting foundation, and
22 same thing for alternative financings on it, nor have we seen
23 any alternative uses of the property, as Office of Planning
24 has suggested, that it might, what happens with the residential
25 numbers, I mean, that it becomes an apartment, or a rental,

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1 rather, what's the financials on the rental? Does that turn
2 where there's no condo fees involved in that?

3 We've got evidence here -- we got some numbers about
4 condo fees being so high, and so the Board needs the underlying
5 basis of the evidence that supports the summaries or the
6 opinion that's been offered by the Applicant. And also, in
7 regards to the FHA financing ratios, the ratios of commercial
8 to residential ratio, well, we still haven't seen if there's
9 any -- we haven't seen those configurations in front of us.
10 Again, it's a summary and conclusion.

11 Office of Planning has indicated that this will have
12 substantial impact upon the zoning regulations because it's
13 undercutting the whole aspect of the zoning regulations. As
14 I said before, I was there and I was hoping that the financials
15 could certainly support where I thought we could be, but we
16 didn't get those things, and so I'm with Mr. Turnbull, I can't
17 support this application at this point. Anybody else?

18 Then I would move that we deny the requested relief in
19 189 --

20 MS. MOLDENHAUER: Could I have the Board bifurcate the
21 application in regards to the FAR and lot occupancy from the
22 parking and lot occupancy?

23 CHAIRPERSON JORDAN: If it's okay with the Board, we'll
24 go it, because there's two avenues of relief asked here, one
25 is the lot occupancy, the other is the off-street parking, and

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1 that it's impossible for them to be able to get parking in
2 because of how it's situated in a triangle, not impossible,
3 but there is an exceptional condition and practical
4 difficulty, so that's what they're asking for. I mean, I'd
5 be willing to do that.

6 ZC MEMBER TURNBULL: Could I ask the Office of Planning
7 to weigh-in on that?

8 MR. COCHRAN: Well, there's also the basic question of
9 the FAR, not just the lot occupancy and parking.

10 CHAIRPERSON JORDAN: Yes, but still, the parking is on
11 its -- each one of these land on their own bottom, they may
12 get relief from one without getting relief from two and three,
13 or something.

14 MR. COCHRAN: I understand.

15 CHAIRPERSON JORDAN: And in that case, I can certainly
16 support the relief for parking. So then I would move that --
17 oh, Mr. Hinkle?

18 BZA MEMBER HINKLE: Yes, I was just going to note that
19 the request was also for lot occupancy as well, relief from
20 that, and I certainly could support the relief to lot
21 occupancy. I think this is a difficult site to develop. It's
22 triangular, it's pretty small at the point, it's got two
23 frontages on streets, so I can support that.

24 CHAIRPERSON JORDAN: Okay. Any other thoughts about
25 the -- so you want to make a motion or want me to do it? So

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1 the motion would be that we would support lot occupancy and
2 off-street parking relief, but deny the relief for FAR. Would
3 that be consistent?

4 BZA MEMBER HINKLE: I'll second it.

5 CHAIRPERSON JORDAN: Motion made and seconded. All
6 those in support, aye.

7 (Ayes)

8 CHAIRPERSON JORDAN: Those opposed, nay. The motion
9 carries. Mr. Moy.

10 MR. MOY: Staff would record the vote as 4-0. It's on
11 the motion of Chairman Jordan to deny the request for FAR, but
12 supporting the request for lot occupancy in 2101. Second to
13 the motion was Mr. Hinkle. Okay. Also in support, Vice Chair
14 Heath and Mr. Turnbull, that fourth seat vacant, so the motion
15 carries.

16 CHAIRPERSON JORDAN: Thank you. Appreciate it.

17 MR. VOYLES: Could we propose a summary order?

18 CHAIRPERSON JORDAN: Well, are you going to waive your
19 right or ability to appeal? I don't even know if you can do
20 that.

21 MR. COCHRAN: Just from the standpoint of the order's
22 sake, if the Applicant isn't able to accommodate an IZ unit,
23 I just want to be sure that the order permits them not a 9
24 percent increase in lot occupancy, but a 29 percent increase
25 in lot occupancy.

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1 CHAIRPERSON JORDAN: It would be whatever is consistent
2 with the relief requested, and that gets grabbed again at the
3 ZA's office, I believe.

4 MR. COCHRAN: Okay.

5 CHAIRPERSON JORDAN: No, let's not do summary. Let's
6 go forward through the order. You can submit proposed finding
7 of facts and conclusions of law which would help expedite it,
8 okay? I just feel more comfortable that way. All right.
9 Thank you. Mr. Moy, you want to call the next Mr. Turnbull
10 case?

11 MR. MOY: Yes, sir.

12 CHAIRPERSON JORDAN: Thank you.

13 MR. MOY: That would be Application 18927 of Nicholas
14 Rodriguez. The Board will recall that this is a continued case
15 from April 7th and that the April 7 thought public hearing,
16 the Board closed record and did not request any additional
17 information for filing from the Applicant.

18 CHAIRPERSON JORDAN: Okay. So which one did you call?

19 VICE CHAIR HEATH: 927.

20 CHAIRPERSON JORDAN: 927?

21 VICE CHAIR HEATH: Rodriguez.

22 CHAIRPERSON JORDAN: Okay. Is that for -- it's a
23 continued hearing. Okay. So is the Applicant here for this
24 case? Please come. Okay. And what did we try to get out of
25 this one? Okay. Board asked questions of the Applicant, took

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1 testimony from two neighborhood petitions, the Board continued
2 the hearing, revised plans regarding shadow study, oh, I didn't
3 see that. Okay. How did I miss that? Okay. Please
4 identify yourself for us.

5 MR. FOWLER: Mike Fowler from Fowler Architects.

6 CHAIRPERSON JORDAN: Which exhibit is the revised
7 shadow study? 44? We got that before, didn't we? Oh, yes,
8 okay. That's this. Okay. All right. Board, is there any
9 additional questions or anything we need on this case? I think
10 we've been through the whole gamut on this and just needed some
11 additional information. I don't think the shadow studies do
12 anything. I mean, there's just a little bit of encroachment
13 in March, right?

14 VICE CHAIR HEATH: In the morning.

15 CHAIRPERSON JORDAN: Yes, in the morning. And then
16 December, December is just bad all around, so before or after.
17 So just March appears to be the only time that there's impact?
18 I mean, there's some additional shading?

19 MR. FOWLER: Yes, and it would be similar in the fall.
20 Those two months are, more or less, the same. I think I noted
21 it that way on the comment.

22 CHAIRPERSON JORDAN: Board, any additional questions
23 of the Applicant on this case? This is another one of those
24 projects which are just difficult to fit, but our hands are
25 kind of tied. Any other questions anybody need to ask the

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1 Applicant? We just want to close the record? Are we good for
2 closing the record and --

3 ZC MEMBER TURNBULL: Yes, I think when we went through
4 this, I mean, I think we had -- I mean, there's opposition,
5 and we went through, we struggled through the everyone's
6 comments, but I think we're left with the shape of the project
7 the way it is.

8 CHAIRPERSON JORDAN: Yes. Okay. Then we certainly
9 close the record. The Board ready to deliberate on this case?
10 Any thoughts anybody want to -- you know, and then the other
11 thing, this is a special exception and I don't see anything
12 that's showing a substantial impact with the requested relief.
13 It's just a -- you know, I don't know how much the change is
14 even affecting the neighborhood in and of itself. It's a very
15 tight area, period, but I don't think there's been a showing
16 that there is a substantial impact to me. Anybody else?

17 ZC MEMBER TURNBULL: Well, I think, the Office of
18 Planning looked at -- I mean, the Applicant went back, went
19 to the neighbors, did make some changes, and tried to alleviate
20 some of the concerns. Lowered the height on the one side. I
21 think the impact of the shadow studies shows that it's -- with
22 the existing fences there, I don't think the impact is that
23 much more than --

24 CHAIRPERSON JORDAN: What's already there.

25 ZC MEMBER TURNBULL: -- what's there. There's the

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1 window aspect, but it's looking back at the side of a side yard,
2 I don't think you're looking directly into the house, but I
3 mean, yes, I think I struggled with this too. I think we all
4 have. It's unfortunate. I mean, part of the problem is, it's
5 the lot, the shape of the lot, which was created from this site,
6 but I think the Applicant has tried to alleviate some of the
7 concerns and I'm ready to move ahead on this.

8 CHAIRPERSON JORDAN: Any other? So then I would move
9 that we grant the relief requested in 18927.

10 VICE CHAIR HEATH: Second.

11 CHAIRPERSON JORDAN: Motion made and seconded.
12 Additional discussion? All those in favor, aye.

13 (Ayes)

14 CHAIRPERSON JORDAN: Those opposed, nay. The motion
15 carries. Mr. Moy.

16 MR. MOY: The staff would record the vote as 4-0. It
17 was on the motion of Chairman Jordan to approve the application
18 for the relief requested on Special Section 223. Second the
19 motion, Vice Chair Heath. Also in support, Mr. Turnbull, Mr.
20 Hinkle, Board seat vacant. Motion carries.

21 CHAIRPERSON JORDAN: Summary.

22 MR. MOY: Thank you.

23 CHAIRPERSON JORDAN: Okay.

24 MR. FOWLER: Thank you.

25 (Whereupon, the proceedings went off the record at 11:46

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1 a.m. and went back on the record at 12:15 p.m.)

2 CHAIRPERSON JORDAN: Let's go to our next hearing case.
3 Where are we? You guys need a break for lunch or you need to
4 keep going? What do you want to do? Keep going? Go a little
5 longer. Okay. 984, I think, is there anything that's easy
6 on this docket?

7 Oh, we got another continued hearing. So we got a
8 continue hearing, right? So we should do that one? Make
9 sense? 935 is a continued hearing?

10 MR. MOY: Yes, sir. Okay. That's continued hearing
11 of Application Number 18935 of Sonja Sweek and --

12 CHAIRPERSON JORDAN: It shouldn't be that difficult.
13 All right. So this is 18935. All right. Please identify
14 yourselves.

15 MS. SWEET: My name is Sonja Sweet. I'm the owner of
16 the property and the Applicant.

17 MR. HOLL: My name is Frederick Holl. I'm the
18 architect.

19 CHAIRPERSON JORDAN: All right. This is a continued
20 hearing. We actually had this before us on March 10th. Let
21 me ask you this, there's been some changes to the plans.
22 What's the height change? There's been some height changes?

23 MR. HOLL: We changed the height. We dropped it down
24 to 15 feet to conform with the curb zoning code.

25 CHAIRPERSON JORDAN: So it's all 15 feet. It's not

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1 15.8, 15.1, 15.2?

2 MR. HOLL: It's 15 feet at the yard side that's shared
3 with the house.

4 CHAIRPERSON JORDAN: So is there a zoning -- so now this
5 moves into a special exception.

6 MS. SWEET: That's right.

7 MR. HOLL: Yes. We've added variances and we've
8 submitted for a special exception.

9 CHAIRPERSON JORDAN: Do you have some --

10 ZC MEMBER MAY: Can I clarify though? I mean, it's 15
11 at the yard side, but it's 15.8 on the drive.

12 MR. HOLL: That's permitted as far as we know under the
13 current --

14 CHAIRPERSON JORDAN: Fifteen, you mean.

15 MR. HOLL: Fifteen.

16 CHAIRPERSON JORDAN: But what Mr. May is asking --

17 MR. HOLL: Fifteen at the side that adjoins the house.

18 MS. SWEET: That faces the house.

19 ZC MEMBER MAY: Right, but it's 15.8 at the alley.

20 MR. HOLL: I believe it may be that high, but --

21 ZC MEMBER MAY: Well, that's what your drawing is
22 showing. They're showing two dimensions, 15.8 and 15.

23 CHAIRPERSON JORDAN: Okay. So that's what I was asking
24 you, had it changed overall, 15?

25 MR. HOLL: Yes.

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1 CHAIRPERSON JORDAN: But no, there's still 15.8 at the
2 alley. Got it. Okay. Thank you. So we're still at the
3 variance relief. Board, anything else --

4 MS. SWEEK: No, no, no.

5 MR. HOLL: It was my understanding that a garage is only
6 measured at the yard side in terms of height.

7 MS. SWEEK: It's supposed to be 15 feet at the front,
8 draining toward the back. Fifteen feet at the side that faces
9 the --

10 MR. HOLL: I'll be happy to make that change right now
11 if the Board would permit me to do so.

12 CHAIRPERSON JORDAN: Mr. May?

13 ZC MEMBER MAY: Okay. But you still need relief
14 because you're going to have a full floor there, right?

15 MR. HOLL: No, we've abandoned the relief request for
16 the full floor, and we've changed it into a mezzanine.

17 MS. SWEEK: We have nothing now that requires a
18 variance. Everything that we're asking for now is special
19 exception.

20 ZC MEMBER MAY: All right. Let me look again at the
21 drawings that we received because that's not what I read in
22 the drawings.

23 CHAIRPERSON JORDAN: And they would have to amend the
24 drawings again, Mr. May.

25 ZC MEMBER MAY: If they're not correct, yes, they would

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1 have to be amended again.

2 CHAIRPERSON JORDAN: So did you have the chance to talk
3 to Office of Planning about your amended plans?

4 MR. HOLL: I did. I submitted these plans to the Office
5 of Planning and it was in my discussions with Steven Gyor when
6 this issue with the 15 feet at the common yard that was shared
7 on the house side came up.

8 ZC MEMBER MAY: All right. So I'm showing a limit of
9 the mezzanine, so the mezzanine is 9 feet 4 wide, but it's the
10 full depth, is that correct?

11 MR. HOLL: It's the full depth, except for the stairs.
12 That's correct.

13 ZC MEMBER MAY: Right.

14 MR. HOLL: Mezzanine area occupies 1/3 of the floor area
15 below it.

16 ZC MEMBER MAY: Okay. Unless your drawings are not
17 proportionate, I don't believe that's the case. You're
18 talking about that? Is that subtracting out the area of the
19 stairway?

20 MR. HOLL: Yes, you would subtract out the area of the
21 stairway and this was --

22 ZC MEMBER MAY: Right.

23 MR. HOLL: -- something that I had discussed with Office
24 of Planning and Office of Zoning, and Office of Zoning said
25 that stairs are not included in the mezzanine area.

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1 ZC MEMBER MAY: Okay. So 130 here is 181 feet and 543,
2 and so 94 times 23.8, okay. All right. So then the only
3 problem with the drawings is the height.

4 MR. HOLL: Which, I'm sorry about that. It's --

5 CHAIRPERSON JORDAN: So you're going to --

6 MR. HOLL: Oh, I will correct those.

7 CHAIRPERSON JORDAN: Okay. So yes, if we do approve
8 this, they'd be subject to the corrected drawings.

9 MR. HOLL: Right. I can submit that --

10 ZC MEMBER MAY: Well, I mean, we're not actually
11 granting relief related to the height of it, they would simply
12 have to comply with the zoning regulations, which is 15 feet
13 and no more than 1/3.

14 CHAIRPERSON JORDAN: You're correct, and it'll get
15 caught one way or the other going back, hopefully, to the ZA.

16 ZC MEMBER MAY: Okay. That's fine.

17 CHAIRPERSON JORDAN: So then what's before us is just
18 --

19 BZA MEMBER HINKLE: So just a question. Is there a
20 grade change? So is the yard higher than the alleyway?

21 MR. HOLL: There's a minor grade change.

22 BZA MEMBER HINKLE: So does that account for this extra
23 8 inches on the back side?

24 MR. HOLL: Well, the grade changes about 4 or 5 inches.

25 BZA MEMBER HINKLE: Okay.

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1 MR. HOLL: But since we're doing a fair amount of
2 excavation here, you never know where you're going to end up,
3 and I wanted to throw a little extra.

4 BZA MEMBER HINKLE: But you're looking at a flat roof
5 at 15 feet as measured from the yard side.

6 MR. HOLL: That's correct. Flat roof at 15 feet.

7 MS. SWEET: Fifteen feet.

8 BZA MEMBER HINKLE: So I guess my question might be to
9 Office of Planning, is that where you measure that --

10 CHAIRPERSON JORDAN: I was just going to flip over
11 there. Would you introduce yourself and this is not -- this
12 is your case?

13 MS. RAPPOLT: It's not. I'm Megan Rappolt with the
14 Office of Planning. I'm just stepping in for Steven Gyor today
15 and I don't believe that Steven had raised that as an issue,
16 the way you were measuring height in your application. He
17 thought it was 15 feet to the top of the roof, so he didn't
18 bring that up as something that we should -- that needed relief.

19 BZA MEMBER HINKLE: I mean, I'm just wondering if they
20 don't need to revise the plans if it's measured from the yard
21 side, but I just don't know.

22 ZC MEMBER MAY: Well, I mean, I think the point is that
23 they're no longer requesting relief for the height of the
24 garage.

25 BZA MEMBER HINKLE: Right.

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1 ZC MEMBER MAY: And they're, you know, not requesting
2 relief related to a second floor either, so the only thing
3 that's before us, in essence, if they are, in effect, amending
4 their application, is the lot occupancy, right?

5 BZA MEMBER HINKLE: Correct, but I thought I was hearing
6 discussion that they needed to submit revised plans.

7 ZC MEMBER MAY: I don't think they need to because we're
8 not granting relief related to it. It doesn't matter what
9 their drawings say, it just has to comply with the code.

10 BZA MEMBER HINKLE: Okay.

11 CHAIRPERSON JORDAN: Yes, they would just have to get
12 that -- whatever it is, they have to get it past the Zoning
13 Administrator and that's --

14 ZC MEMBER MAY: Right.

15 CHAIRPERSON JORDAN: -- and so we just have this special
16 exception request here. All right. Is there anything else
17 that we need to do with -- anybody need to hear anything?

18 ZC MEMBER MAY: So I guess I'm looking for some
19 clarification about the lot occupancy itself because there was
20 some language about whether the side yard, the existing side
21 yard, is or is not 5 feet, in which case, we could grant a
22 special exception for lot occupancy at less than 70 percent.

23 MR. HOLL: The existing side yard is at 5 feet.
24 Initially, I thought that it wasn't, but discovered an
25 encroachment of the house on the lot to the north, which average

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1 foot to foot and a half, thereabouts, and --

2 ZC MEMBER MAY: Right. I mean, but it's a big
3 difference for us if that side is not included in the lot
4 occupancy, then you're in special exception territory. And
5 if that's where you are, it's a relatively easy hurdle to clear.
6 A variance for lot occupancy in this circumstances is harder
7 to clear, because you're talking about 76 percent, or something
8 like that.

9 MR. HOLL: Right.

10 ZC MEMBER MAY: It's a technicality, but it's an
11 important one.

12 MR. HOLL: Right. We're requesting a special
13 exception on lot coverage.

14 ZC MEMBER MAY: Okay. So if that's the case, then I
15 don't have any problem moving forward and granting -- well,
16 we haven't gotten to the deliberation yet, but --

17 CHAIRPERSON JORDAN: Yes, but I think we are --

18 ZC MEMBER MAY: -- I'll signal where I am. How about
19 that?

20 CHAIRPERSON JORDAN: But I think we're at that point
21 unless there's additional questions. Then I would move that
22 we grant the special exception relief for lot occupancy in this
23 matter.

24 ZC MEMBER MAY: I'll second that.

25 CHAIRPERSON JORDAN: Motion made and seconded.

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1 Additional discussion?

2 ZC MEMBER MAY: I was just going to make clear, I mean,
3 we're talking about the special exception to grant lot
4 occupancy that would be greater than 60, but less than 70
5 percent, because I don't think we have an exact calculation
6 of that.

7 CHAIRPERSON JORDAN: Right.

8 ZC MEMBER MAY: Does Office of Planning -- do you have
9 that exact calculation under the new --

10 MS. SWEET: We have 67.2.

11 ZC MEMBER MAY: You have 67.2.

12 MR. HOLL: 67.6.

13 MS. RAPPOLT: The drawing says 67.6.

14 ZC MEMBER MAY: Yes, okay, 67.6. So I just want to
15 clarify it's 67.6. Perfect. Thank you.

16 CHAIRPERSON JORDAN: Yes. And then the Applicant
17 knows that whatever they get past DCRA, they're going to have
18 to make sure that the measurements are 15 all around.

19 MR. HOLL: Absolutely.

20 CHAIRPERSON JORDAN: All right. All those in favor of
21 the motion, aye.

22 (Ayes)

23 CHAIRPERSON JORDAN: Those opposed, nay. The motion
24 carries. Mr. Moy.

25 MR. MOY: Staff would record the vote as 4-0, this is

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1 on the motion of Chairman Jordan to approve the special
2 exception relief requested, also seconding the motion, Mr.
3 Peter May, also in support, Vice Chair Heath and Mr. Hinkle,
4 Board seat vacant, motion carries 4-0, sir.

5 CHAIRPERSON JORDAN: Summary?

6 MR. MOY: Yes.

7 CHAIRPERSON JORDAN: Thank you. Thank you for coming
8 and don't forget the things you have to do.

9 MS. SWEET: Thank you.

10 MR. HOLL: Always a learning experience. Thank you
11 very much.

12 CHAIRPERSON JORDAN: We don't want to have to see you
13 back in this office again. No. All right. Let's see if
14 there's -- which one did you say? 86? 86. Mr. Moy, 86?

15 MR. MOY: Yes, Application Number 18986 of Gigi
16 Mathews. This is a request, Mr. Chairman, for variance
17 relief.

18 CHAIRPERSON JORDAN: Okay. Oh, this is -- okay. All
19 right. Please identify yourself. Make sure your microphone
20 is on.

21 MS. LOVEWADE: Good afternoon. I'm Dotti LoveWade and
22 I'm Vice Chair of ANC 1A and single-member district
23 representative for 1A11, in which the property is located.

24 CHAIRPERSON JORDAN: Okay. Make sure your microphone
25 is on, please.

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1 MR. CALLEJAS: Good afternoon. My name is Andrei
2 Callejas. I'm the son of Daniel Callejas, the owner of the
3 property 1002 Kenyon Street, NW, D.C.

4 CHAIRPERSON JORDAN: Okay.

5 MR. CALLEJAS: My name is Daniel Callejas.

6 CHAIRPERSON JORDAN: All right. Something I was just
7 about to say.

8 MS. LOVEWADE: We did have a representative from the
9 Applicant. I don't know what happened to him.

10 CHAIRPERSON JORDAN: All right. You're not the
11 Applicant?

12 MS. LOVEWADE: No.

13 CHAIRPERSON JORDAN: Where's the Applicant? You're
14 just neighbors or --

15 MR. CALLEJAS: Yes, we're the neighbors of the
16 Applicant.

17 CHAIRPERSON JORDAN: Got you. Where's the Applicant?
18 Going once. Are you the Applicant? You're just about to lose
19 your case. It was going -- identify yourself, please.

20 MR. MATTHEWS: I'm Gigi Matthews, the Applicant and the
21 owner of 1000 Kenyon Street, NW.

22 CHAIRPERSON JORDAN: Okay. So this is before us for
23 variance to put a rear deck. So you need relief from lot
24 occupancy, rear yard, and what about non-conforming structure?
25 What are we expanding and non-conforming? What's being

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1 expanded, Ms. Elliott, and non-conforming? Anybody?

2 MS. ELLIOTT: I believe that -- well, it was relief that
3 was identified by the Zoning Administrator as being necessary.

4 ZC MEMBER MAY: Making an addition to a non-conforming
5 structure. It's non-conforming with regard to lot occupancy
6 and size of the lot, right?

7 MS. ELLIOTT: I believe so. I'm sorry.

8 CHAIRPERSON JORDAN: Are we changing lot occupancy from
9 -- okay. Okay. Yes, okay. This is a -- have you had any
10 conversations with your neighbors or that building? Is it a
11 seniors building?

12 MR. MATTHEWS: Right behind me. Now, I spoke with some
13 neighbors, not --

14 CHAIRPERSON JORDAN: I mean, where is this window
15 situated that --

16 MR. MATTHEWS: That building, as they stated in the
17 opposition, the north side of their building is facing the rear
18 side of my house.

19 CHAIRPERSON JORDAN: There's a window there on that
20 north side?

21 MR. MATTHEWS: There is no window on that side of the
22 building.

23 CHAIRPERSON JORDAN: I don't see it in the pictures.

24 MR. MATTHEWS: Yes.

25 CHAIRPERSON JORDAN: But they talk about the window

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1 being there.

2 MR. MATTHEWS: No, that's not correct.

3 CHAIRPERSON JORDAN: Is anyone here from -- what group
4 was that, the Friendly Neighborhood Cooperative Association?
5 Oh, well, this becomes easier, because they sent a letter in
6 opposition, and I looked at it, although it's tight back there,
7 there's a deck going all the way to that wall?

8 MR. MATTHEWS: It's not a single one. We still have
9 about one foot space because their property is actually on the
10 line, on their property line, their building is on the property
11 line.

12 CHAIRPERSON JORDAN: And there's no rear yard. You're
13 going to have 1 foot rear yard.

14 MR. MATTHEWS: Yes.

15 CHAIRPERSON JORDAN: What about the noise that's going
16 to be from the deck and the building next door? What kind of
17 noise? What are you going to do, anything, to mitigate any
18 noise?

19 MR. MATTHEWS: It's just for some outdoor space.

20 CHAIRPERSON JORDAN: How are you going to use the deck
21 then? What's your intended use of the deck?

22 MR. MATTHEWS: It's going to have a few chairs to sit
23 and just to get some outdoors.

24 CHAIRPERSON JORDAN: No party and barbecues with 10, 15
25 people, right. You're telling us that, so we can put that in

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1 the order if we grant this. Ah-ha-ha, nothing, I mean,
2 seriously.

3 MR. MATTHEWS: No, it is just for --

4 ZC MEMBER MAY: The truth is, he could have a party in
5 the parking space right now if he wants to.

6 CHAIRPERSON JORDAN: That is very true. You could do
7 that.

8 MR. MATTHEWS: That is right.

9 CHAIRPERSON JORDAN: Yes, but we don't have to
10 encourage you raise it up right to the bedroom window, I guess.
11 You know, down here is a little different than right by the
12 bedroom, but I see it. It's really a tight niche here. Okay.
13 Board, any questions, other questions, with this? Anybody?

14 ZC MEMBER MAY: I just want to clarify that the parking
15 that occurs there now will work under the deck because it looks
16 like it's very tight?

17 MR. MATTHEWS: The specification that I attached with
18 the application was the posts were at 7 feet span, but we are
19 changing that to conform with regulations, so it will all be
20 at 12 feet apart.

21 ZC MEMBER MAY: So I mean, you'll be able to drive a car
22 in there.

23 MR. MATTHEWS: Yes.

24 ZC MEMBER MAY: Okay. Because I mean, the one thing
25 that does concern me about this, is that, if you build the deck,

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1 does that mean that you're going to windup parking your car
2 in the public space, which is anything that's -- I mean, the
3 public space is the space between the face of the building and
4 the sidewalk there, and that happens frequently, and people
5 like to have their cars sticking out into the sidewalk, and
6 all that sort of stuff, and we don't want to encourage that.

7 MR. MATTHEWS: No, there is enough room for the car to
8 fully go under the deck.

9 ZC MEMBER MAY: I mean, theoretically, anything that's
10 the face of the building, I'm not even talking about the bay,
11 but anything that's, I guess, further. The parking is on the
12 east side of the property?

13 MR. MATTHEWS: On the south.

14 ZC MEMBER MAY: South side of the property. So
15 anything that's south of the south wall of the property, not
16 even the bay, which is toward the back there, but the south
17 wall itself is public space and your vehicle should not be
18 parked in that space, so I'm assuming that you'll still be able
19 to pull all the way in.

20 MR. MATTHEWS: Right. Yes.

21 ZC MEMBER MAY: Okay.

22 CHAIRPERSON JORDAN: Okay. Any other questions we
23 need to drill down in the Applicant? I think it's pretty
24 straightforward. My concern was the building to the south,
25 but I -- and the question about the window, but the window was

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1 not on that north side of the building.

2 MR. MATTHEWS: Yes.

3 CHAIRPERSON JORDAN: Okay. With that, then, I think we
4 can proceed on in the hearing and go to the Office of Planning
5 and see if there's anything in addition, Ms. Elliott, who's
6 been with us most of the morning, has to say, plus the
7 afternoon, I think.

8 MS. ELLIOTT: It's been a fun day for me. I must say
9 that.

10 CHAIRPERSON JORDAN: You've been doing well. Thank
11 you.

12 MS. ELLIOTT: Thank you. The Office of Planning does
13 recommend approval of this request. Our analysis is based
14 primarily on the fact that this is a substandard lot and we
15 compared it to other lots within the square and found that it's,
16 you know, significantly smaller. And in regards to the
17 parking, we did request that the Applicant move the posts
18 further apart so that there would, essentially, be a 9-foot
19 wide space under there, so that should take care of any parking
20 for the lot, but I'm happy to answer any questions.

21 CHAIRPERSON JORDAN: I think you did, but, Board,
22 questions? Applicant, any questions of the Office of
23 Planning?

24 MR. MATTHEWS: I have no questions.

25 CHAIRPERSON JORDAN: Department of Transportation has

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1 submitted a letter of no objection to the requested relief.
2 ANC-1A, Ms. Wade, you want to --

3 MS. LOVEWADE: Yes, we met on April the 8th. We did not
4 receive sufficient notice of this application. As you know,
5 we had, basically, a whole new turnover, ten new commissioners,
6 and so we're in a teaching process now, and because we didn't
7 have sufficient notice, many of the new commissioners were
8 unready to vote, but if we didn't take a vote, we would not
9 have time to meet today's deadline, so we did have a number
10 of extensions, but it did pass 3-0-7, and the seven were the
11 new commissioners who were unready to take a step.

12 CHAIRPERSON JORDAN: Okay. The seven were
13 abstentions.

14 MS. LOVEWADE: Yes.

15 CHAIRPERSON JORDAN: All right. Boy, you got past that
16 one. Yes.

17 MS. LOVEWADE: And also, I'd just like to add for my
18 other constituents that I did a personal review and inspection
19 of the properties and I did talk with several of the residents
20 in the neighborhood, and I checked the outside space, I think
21 outside space is so critical in an urban community, and this
22 particular property, as most of the properties on that block,
23 has no front yard, and negligible side yard, and zero back,
24 so there are other properties up and down that row of houses
25 that do have decks that are larger.

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1 Mr. Matthews' deck is more like a porch, access porch,
2 but other properties have decks that go out, and they're all
3 landlocked. I mean, there's no alley for these properties,
4 so they have to put their trash out front, so I think we need
5 to, where we can, accommodate our residents to a quality of
6 life that will give them some kind of outdoor space, so that
7 was the major mitigating factor for our vote.

8 CHAIRPERSON JORDAN: Well, thank you. I really
9 appreciate you coming down and the comments. It helps out a
10 lot. Now, I have a whole different perspective of that area.
11 Board, any questions of Commissioner Wade? Again, thank you.

12 MS. LOVEWADE: Okay.

13 CHAIRPERSON JORDAN: Anyone else wish -- oh, Applicant,
14 any questions of Commissioner Wade?

15 MR. MATTHEWS: I have no questions.

16 CHAIRPERSON JORDAN: Yes, you don't want to blow that,
17 because she's right there for you. Anyone wishing to speak
18 in support of the application? Anyone in support? Anyone in
19 opposition?

20 MR. CALLEJAS: Yes. Well, my family and I are
21 concerned -- we have two concerns. We have no opposition
22 towards a horizontal expansion of the deck, but we are opposed
23 to any elevated expansion of the deck because I have pictures
24 here of our backyard. As you know, there's a senior living
25 building directly attached to our backyard and his backyard

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1 as well. And all our homes are landlocked. If he were to
2 expand the deck vertically, it would, basically, enclose our
3 backyard, we would have little airflow, and our sunlight back
4 there is already limited.

5 And our second concern also is just the community
6 outreach that -- I mean, this is the first time he addresses
7 us. He's been our neighbor for more than a year or so and like
8 many people replacing our neighbors in our block and our
9 neighborhood, they haven't done anything to reach out to us
10 and, you know, introduce themselves in any sort of fashion.
11 I would assume that if he wanted to build something, you know,
12 with respect to your neighbor, you would knock on their door
13 and address them personally.

14 But, you know, hey, that wasn't done and now we're here
15 today.

16 CHAIRPERSON JORDAN: Yes, and it kind of works two ways,
17 because you're exactly right, it's something we talked about
18 earlier in the day about, you know, neighbors have to treat
19 neighbors neighborly, especially when you're trying to come
20 get relief and you're trying to do expansions to your home,
21 or whatever, and in fact, it may reverse on you at some point,
22 and so everybody needs to reach out and try to work together,
23 and it really concerns me that that didn't happen in this case,
24 as well as, when the neighbors see the signs up in front of
25 the property, go knock on the doors too, so it kind of works

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1 both ways.

2 Don't try to wait until you get here to find out what's
3 going on, and certainly, ANC meetings, you know, you have the
4 chance to go to ANC meetings and find out what's going on. If
5 this wasn't so real clear-cut, then, certainly, I would just
6 have real problems with them not reaching out to you, that the
7 Applicant not reaching out to you. So you are west of this
8 particular property?

9 MR. CALLEJAS: Right next door. Yes.

10 CHAIRPERSON JORDAN: Okay. And what's the deck being
11 made out of?

12 MR. MATTHEWS: Deck? I'm sorry.

13 CHAIRPERSON JORDAN: What's the deck being made out of?

14 MR. MATTHEWS: It's just pressure-treated wood.

15 CHAIRPERSON JORDAN: It's going to be sit out there and
16 so the sun comes from the east, right?

17 MS. LOVEWADE: No, you get a lot of sun on the back. My
18 deck faces back and that's the only -- I mean, south. That's
19 the only real sun you get is from the south. There's no west
20 and very little east, and absolutely, you're blocked in the
21 north. So I mean, I go back to the outdoor space and the
22 quality of life. And for example, my deck is enclosed. The
23 house to the west of me has a carriage house and to the east
24 of me, there's a four-story apartment building, and I make out
25 just fine in my little -- give me a little area of privacy,

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1 actually.

2 I mean, I'm not belittling it, but you may, at some
3 point, want to expand your deck, and then you have a precedence
4 for why you should be able to do it because your neighbor next
5 door, you have the right, and if you look up and down your block,
6 you will see there are larger decks out there, and you could
7 always call me if you have any concerns if he's partying too
8 much, you know, there are things we can do.

9 CHAIRPERSON JORDAN: So is it Callejas?

10 MR. CALLEJAS: I'm sorry?

11 CHAIRPERSON JORDAN: So do you have a deck?

12 MR. CALLEJAS: No.

13 CHAIRPERSON JORDAN: You don't have a deck.

14 MR. CALLEJAS: Well, I wouldn't call it that. We have
15 a small structure. I have images here if you want to see it.
16 But let me repeat myself --

17 CHAIRPERSON JORDAN: So you've built out from the back
18 of your house?

19 MR. CALLEJAS: It came with the house like that.

20 CHAIRPERSON JORDAN: It's like a porch?

21 MR. CALLEJAS: Barely. It came with the house. I have
22 images here if you want to see them.

23 ZC MEMBER MAY: I think we have some in the record that
24 show through Mr. Matthews' property toward yours, and we're
25 seeing a stair that goes up --

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1 MR. CALLEJAS: Yes.

2 ZC MEMBER MAY: -- eight steps, and then there's a
3 landing that's probably 8 x 8 square, something like that?

4 MR. CALLEJAS: Yes. Exactly.

5 CHAIRPERSON JORDAN: What number are you looking at?

6 ZC MEMBER MAY: I'm looking at Number 9.

7 CHAIRPERSON JORDAN: Oh, okay. So it's a little
8 further out.

9 ZC MEMBER MAY: Right. So it's toward the north end of
10 your property, right?

11 CHAIRPERSON JORDAN: The person west of that has the
12 same kind of -- okay. We see. All right. Thank you. Anyone
13 else? We appreciate you coming down and I think you guys just
14 --

15 ZC MEMBER MAY: Can I ask him one question? Sure. So
16 your concern is about the height of the deck, right?

17 MR. CALLEJAS: Exactly. I wanted to repeat myself, I
18 don't think I made it clear. We have no problem with him
19 expanding his deck horizontally.

20 ZC MEMBER MAY: Right.

21 MR. CALLEJAS: We have, like, next to us, on the other
22 side, and two houses down, who have decks that cover more than
23 50 percent of their backyard. We have no problem with a
24 horizontal expansion, it could touch the apartment building,
25 all it wants to do.

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1 ZC MEMBER MAY: Right.

2 MR. CALLEJAS: We have a problem with the deck being --
3 if there were some sort of elevated expansion, like steps being
4 added to --

5 ZC MEMBER MAY: Got it. So anything where you come out
6 of the backdoor there and then go up, two or three steps, or
7 whatever, and that's not the case, right? The drawing that
8 I show is that you're going straight out from that level, is
9 that right?

10 MR. MATTHEWS: The car is parked underneath.

11 ZC MEMBER MAY: Yes.

12 MR. MATTHEWS: The height of the deck is 7 feet.

13 ZC MEMBER MAY: Right.

14 MR. MATTHEWS: That's only because the car is parked
15 under --

16 ZC MEMBER MAY: So what is -- it's 7 feet above --

17 MR. MATTHEWS: The ground.

18 ZC MEMBER MAY: Of the grade.

19 MR. MATTHEWS: Or grade.

20 ZC MEMBER MAY: And so where's the threshold of the
21 backdoor?

22 MR. MATTHEWS: Right. The kitchen door is at 5 feet
23 from the grade.

24 ZC MEMBER MAY: So you have to go out and go up two steps.

25 MR. MATTHEWS: Two steps going up.

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1 ZC MEMBER MAY: It's either that or you can't park
2 underneath, right?

3 MR. MATTHEWS: Right.

4 ZC MEMBER MAY: Okay. Because your drawings don't
5 really show that very well. I mean, is there a basement level
6 walkout?

7 MR. MATTHEWS: There is, but that's not being used.

8 ZC MEMBER MAY: Well, I understand, but I mean, I think
9 that's shown in the plans.

10 MR. MATTHEWS: Right. That's shown.

11 ZC MEMBER MAY: And then you have plans that show the
12 7-foot height, and I was having trouble figuring out how you
13 got to 7-feet too, because it doesn't look to me like it's 7
14 feet the way it is, but the plans for your deck don't show a
15 landing that you come up and then go up to the main deck. Your
16 plans just show it as if it's coming straight out.

17 MR. MATTHEWS: There is a cross-section, actually, it
18 shows --

19 ZC MEMBER MAY: Okay.

20 MR. MATTHEWS: Oh boy.

21 ZC MEMBER MAY: Yes, I'm not seeing -- I mean, the plan,
22 yes, seems to show a landing and three steps, but it reads as
23 if we're just looking through the deck and seeing the landing
24 and the three steps that come out of the basement, and then
25 you have a section which does not showing anything indicating

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1 that, and then you have a rear elevation which shows it right
2 at the threshold of your kitchen door.

3 MR. MATTHEWS: Kitchen door. Yes.

4 ZC MEMBER MAY: So that doesn't really show it going up
5 2 feet, or two steps, whatever it is. Two feet, right?

6 MR. MATTHEWS: Yes, it's 2 feet that's going up.

7 ZC MEMBER MAY: Right. All right. So now we
8 understand what the real issue is. I mean --

9 CHAIRPERSON JORDAN: Going up. And why do we need to
10 be 7 feet?

11 MR. MATTHEWS: Because the car parked underneath and
12 getting out of the car without hitting your head.

13 CHAIRPERSON JORDAN: Seven feet?

14 MR. MATTHEWS: That's a maximum allowed.

15 ZC MEMBER MAY: Yes, I mean, 7 feet is not unreasonable
16 for clearance for getting out of the car.

17 CHAIRPERSON JORDAN: Six feet, six plus, you --

18 ZC MEMBER MAY: Go to 6-8.

19 CHAIRPERSON JORDAN: Okay.

20 ZC MEMBER MAY: The alternative would be to excavate and
21 actually ramp down to a parking space, because you already have
22 a well there at your basement door, right, and so you must have
23 a drain there.

24 MR. MATTHEWS: Yes, I do have a drain.

25 ZC MEMBER MAY: I mean, it's a lot more work,

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1 admittedly.

2 MR. MATTHEWS: It's hard to prevent the water going into
3 the basement. The basement is --

4 ZC MEMBER MAY: It's a classic problem.

5 MR. MATTHEWS: Right.

6 ZC MEMBER MAY: Many people just buy sandbags.

7 MR. MATTHEWS: That is right.

8 ZC MEMBER MAY: I've done that.

9 MR. MATTHEWS: So 7 feet itself, you know, sun blocking,
10 it is not a substantial sunblock from something like that, 7
11 feet, sun rising in the east, going up, so there is enough
12 sunlight that you can get during the day for an enclosed space,
13 and this deck, it's a very open deck. There is no roof,
14 nothing. It's just a flat deck, and even the rails are spaced
15 at least 16 inches apart, so there is sun, wind flow. It would
16 not substantially block sun or wind flow.

17 CHAIRPERSON JORDAN: All right. Board any other
18 questions of the witnesses? Thank you. We appreciate that
19 and it helps put some other things in perspective for us here.
20 Thank you.

21 MR. MATTHEWS: Thank you.

22 CHAIRPERSON JORDAN: Anyone else in opposition?
23 Anyone else in opposition? Then we'll turn back to the
24 Applicant. Anything else you want to say to us?

25 MR. MATTHEWS: Nothing else.

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1 CHAIRPERSON JORDAN: Okay. Then we'll close this
2 hearing and the Board ready to deliberate? All right. So
3 where are we on this one? Mr. May?

4 ZC MEMBER MAY: Well, I appreciate the sensitivity
5 about the height of the deck, however, I think 2 feet is not
6 a really big difference. And I do appreciate, like the ANC
7 does, the value of having usable outdoor space and I think that
8 it's easy enough to see how this relief is appropriate and
9 helpful, and not going to be unduly impactful to the neighbors,
10 so I'd be in support.

11 CHAIRPERSON JORDAN: All right. Was that a motion?

12 ZC MEMBER MAY: Sure, I would make a motion.

13 CHAIRPERSON JORDAN: To support the application.

14 ZC MEMBER MAY: To support the application. I would
15 make a motion to approve Application Number 18986 of Gigi
16 Matthews for lot occupancy, rear yard, and non-conforming
17 structure.

18 VICE CHAIR HEATH: I'll second.

19 CHAIRPERSON JORDAN: Motion made and seconded.
20 Additional discussion. All those in favor, aye.

21 (Ayes)

22 CHAIRPERSON JORDAN: Those opposed, nay. The motion
23 carries. Mr. Moy.

24 MR. MOY: Yes, sir. Staff would record the vote as 4-0.
25 This is on the motion of Mr. Peter May, second the motion, Vice

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1 Chair Heath. Also in support, Chairman Jordan and Mr. Hinkle.

2 CHAIRPERSON JORDAN: And Commissioner Wade.

3 MR. MOY: Oh, yes. Thank you, sir.

4 CHAIRPERSON JORDAN: All right. Summary order.

5 MR. MOY: Thank you.

6 CHAIRPERSON JORDAN: Thank you all for coming down.
7 Appreciate it. Wow. Okay. I didn't think we'd see this
8 before 4 o'clock, but we're at our last case? Wow.

9 ZC MEMBER MAY: Can I just add one other thing before
10 Mr. Matthews leaves? I think one of the things that we heard
11 about this was the importance of being a good neighbor, and
12 I think there's a lesson to be learned there, it's one of the
13 things that we try to encourage in the Zoning Commission, so
14 talking to your neighbors about these projects is very
15 important. Thanks.

16 CHAIRPERSON JORDAN: You want to call the last case?

17 MR. MOY: Yes. The last case for public hearing is
18 Application Number 18984. This is the application of, if I
19 pronounce this correctly or not, Kateh Zahraie. This is a
20 property at 1546 New Jersey Avenue, NW.

21 CHAIRPERSON JORDAN: Excuse me one second here. Okay.
22 Here we go. All right. Please introduce yourselves.

23 MR. RUBENS: Hi. My name is Frederick Rubens. I'm
24 representing the Applicant.

25 CHAIRPERSON JORDAN: Ruben?

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1 MR. RUBENS: Rubens. Frederick Rubens. I'm
2 representing Kateh, the Applicant, and also co-owner of the
3 property.

4 MR. ZAHRAIE: Hi. My name is Navid Zahraie, co-owner.

5 MS. ZAHRAIE: I am Kateh Zahraie, owner.

6 MR. SMITH: Hi. I'm Lawrence Smith. I own the
7 property next door at 1544 New Jersey Avenue.

8 CHAIRPERSON JORDAN: Okay. So we have some issues with
9 this. Office of Planning is not supportive. Who else is not
10 supportive? Okay. Got it. All right. So I think we
11 understand the project and what you're trying to do, so you
12 don't have to give that to us, but there is opposition to your
13 relief. Office of Planning certainly doesn't support it and
14 so we need you to show us why we should grant you this relief.

15 MR. RUBENS: Sir, we have brought with us extra exhibits
16 to address the comments of Office of Planning regarding their
17 self-imposed practical difficulty comment in their report,
18 which we would like to present to the Board if possible.

19 CHAIRPERSON JORDAN: Okay. Give them to Mr. Moy,
20 please. You don't have copies?

21 MR. RUBENS: Yes, we have copies for --

22 CHAIRPERSON JORDAN: Give them to Mr. Moy, please. And
23 have you all been sworn in and were here this morning and gave
24 your witness cards to the court reporter?

25 MR. RUBENS: Yes, we did.

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1 CHAIRPERSON JORDAN: How many units is this?

2 MR. RUBENS: It's for three units, sir. It's a
3 two-unit existing and we would like to add one.

4 CHAIRPERSON JORDAN: Add one unit.

5 MR. RUBENS: Add one unit. Yes.

6 CHAIRPERSON JORDAN: So how long have you owned this
7 property?

8 MR. RUBENS: We purchased the property in June last
9 year.

10 MS. ZAHRAIE: Last year.

11 CHAIRPERSON JORDAN: And was it your intent when you
12 purchased this property that you were going to use it to add
13 a unit?

14 MR. RUBENS: No, that was not our intention, sir. The
15 intention was to build it out as a two-unit, but because of
16 certain issues that were discovered because of the inspection
17 with it, and after a structural analysis of the project by our
18 structural engineer, the cost of the project became much larger
19 than the --

20 CHAIRPERSON JORDAN: And so prior to you buying it, you
21 didn't have the property inspected and didn't look at it
22 structurally?

23 MR. ZAHRAIE: As it's pointed out in the report that we
24 just gave from our real estate agent, the market is so
25 competitive at this time that a lot of these properties have

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1 to be purchased as-is and most buyers have to waive their right
2 for the inspection, and this was that kind of a situation.

3 CHAIRPERSON JORDAN: You don't have to.

4 MR. ZAHRAIE: If you want to purchase it.

5 CHAIRPERSON JORDAN: You don't have to.

6 MR. ZAHRAIE: Right.

7 CHAIRPERSON JORDAN: And so then the community has to
8 bear that burden, is that what you're saying?

9 MR. ZAHRAIE: Not particularly, but it's a burden that
10 is tied to the property. Anybody who would own this property
11 would be in this situation. It's not particular just to us.

12 CHAIRPERSON JORDAN: Who's Chris Burns?

13 MR. ZAHRAIE: Sorry?

14 CHAIRPERSON JORDAN: Who's Chris Burns? He wrote a
15 letter.

16 MR. ZAHRAIE: Christopher Burns is our real estate
17 agent.

18 CHAIRPERSON JORDAN: Okay. So he said you bought the
19 property at a good price. Okay.

20 MR. RUBENS: We have submitted with that, sales
21 comparables of similar fixer-upper properties in the immediate
22 vicinity.

23 CHAIRPERSON JORDAN: When was these comps run?

24 MR. ZAHRAIE: They're dated.

25 CHAIRPERSON JORDAN: All right. October 2013 and you

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1 bought it in June of 2014.

2 MR. ZAHRAIE: Correct.

3 CHAIRPERSON JORDAN: Okay. And what was the condition
4 of these properties on your list here?

5 MR. ZAHRAIE: What was the condition of the property
6 when it was purchased? It was --

7 CHAIRPERSON JORDAN: These comps.

8 MR. ZAHRAIE: Oh.

9 MR. RUBENS: I think it was hard to verify, sir.

10 CHAIRPERSON JORDAN: Oh, so let me throw that one away
11 too. Okay. What's the other one we got? Structural
12 engineer. Now, what I'm saying to you is that, when you come
13 here, we have to be ready to show in the record, because we
14 have to build a record, and we just can't assume a lot of things,
15 that's all.

16 MR. RUBENS: Absolutely, sir.

17 CHAIRPERSON JORDAN: And we can take this for what it's
18 worth. The submission of -- for the record, we're taking the
19 letter from Chris Burns from GreenLine Realty Company, dated
20 April 20, 2015, and make that whatever exhibit number it is.
21 I'm thinking we make this all one exhibit, so make this 27A
22 is the letter from --

23 VICE CHAIR HEATH: 37.

24 CHAIRPERSON JORDAN: 37? So it's 37A is the letter
25 from Mr. Burns, with the comps, which would be 37B, it's

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1 entitled, at the top, it says, Matrix, and then we have a 37C,
2 the structural engineer's letter. Okay. All right. So help
3 us. So tell us why we should grant this relief. How do you
4 meet the test? We understand you're saying that the
5 properties need substantial renovation. You bought it and it
6 needed substantial renovation. How long has it been sitting
7 -- was it vacant when you moved in?

8 (Whereupon, the documents referred to were marked as
9 Exhibits 37A, 37B, and 37C for identification.)

10 (Whereupon, the documents previously marked as Exhibits
11 37A, 37B, and 37C for identification were received into
12 evidence.)

13 MR. ZAHRAIE: Yes.

14 CHAIRPERSON JORDAN: And how long has it been in this
15 condition?

16 MR. ZAHRAIE: About a year now.

17 CHAIRPERSON JORDAN: About a year that you've had it,
18 but how long was it in condition prior to you --

19 MR. RUBENS: How long was it in this dilapidated
20 condition, you mean? I think it must have been like that for
21 quite a while. At least, according to our inspector, the last
22 renovations must have been done in the '80s.

23 CHAIRPERSON JORDAN: So am I taking it that -- and,
24 Board, just ask questions. Don't let me dominate this. So
25 it was two different -- was it bought as a corporation, an LLC

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1 --

2 MR. ZAHRAIE: No, we bought it as --

3 CHAIRPERSON JORDAN: Two different families.

4 MS. ZAHRAIE: No, one.

5 CHAIRPERSON JORDAN: And I thought you were an owner.

6 MR. RUBENS: Yes, I'm participating with them in the
7 project and I'm a family friend.

8 CHAIRPERSON JORDAN: So it's not bought as a single
9 family. You bought it with a business intent.

10 MR. RUBENS: We bought it with a business intent and
11 also intend to, possibly, occupy one of the units.

12 MR. ZAHRAIE: Yes.

13 MS. ZAHRAIE: It's under my name. I bought it with my
14 son and our friend, so to see how we can renovate it and how
15 we can --

16 CHAIRPERSON JORDAN: So you bought it --

17 MR. ZAHRAIE: With the intention to live and also make
18 business.

19 CHAIRPERSON JORDAN: From one unit.

20 MR. ZAHRAIE: Yes. Those two units, we could live on
21 one and rent out the other, that was the intention.

22 CHAIRPERSON JORDAN: And at the time that you bought it,
23 and at the time you had the intent, you didn't do any estimate
24 of what it was going to cost for you to repair it, to live in
25 two units before you discovered --

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1 MR. RUBENS: Yes, sir, we did that, but a lot of these
2 deficiencies of the building only came apparent after we broke
3 open the floors and, for example, our inspector had to go in
4 the crawl space to know that a lot of the joists were very badly
5 damaged and that the structural reinforcement needed to build
6 the project were actually much larger than what was visible
7 from a quick inspection that we did prior to purchasing the
8 property.

9 ZC MEMBER MAY: So if I can interrupt. Please, what
10 you've given us in the record is not sufficient in terms of
11 documenting that this is actually a dilapidated property. In
12 previous cases, when we've seen something like this where, you
13 know, the property is in such bad condition, and needs so much
14 work, and it's going to cost so much money, and therefore, in
15 some way, it justifies relief. What you've given us is a
16 statement by a couple of people that it's not in great shape.
17 As far as we know, I mean, it was occupied until close to the
18 time it was sold? Until the time it was sold.

19 MR. ZAHRAIE: Well, there's a couple of issues. First,
20 the repairs exceed a normal --

21 ZC MEMBER MAY: Let me ask my questions. It'll be
22 faster.

23 MR. ZAHRAIE: Yes, sir.

24 ZC MEMBER MAY: So it was occupied until it was sold.

25 MR. ZAHRAIE: Yes.

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1 ZC MEMBER MAY: Okay. And the condition of the
2 interior, when you walked through it, it was in livable
3 condition? I mean, the walls were intact, were there joists
4 falling, was there water coming in through the roof, what was
5 going on?

6 MR. ZAHRAIE: I wouldn't say it was livable up to --

7 ZC MEMBER MAY: Well, people were living in it, so it
8 was livable.

9 MR. ZAHRAIE: It was being used illegally, for sure.

10 ZC MEMBER MAY: Okay. But tell me about the condition
11 of it. Was the roof intact or was there water coming in?

12 MR. ZAHRAIE: The roof was intact.

13 ZC MEMBER MAY: Okay.

14 MR. ZAHRAIE: Afterwards, when we had the inspection
15 done, I was told that this roof only has about just a few years
16 left.

17 ZC MEMBER MAY: It's a totally common thing. Replacing
18 a roof is not a big deal. What about the conditions of the
19 walls. I mean, I assume that the only bearing walls are the
20 outside walls, right.

21 MR. RUBENS: Yes, that's correct.

22 ZC MEMBER MAY: Okay. So it's a 20-foot span of the
23 walls. I mean, you know, was the interior structure
24 inadequate? I mean, were you bouncing on the floors? Was it,
25 joists bouncing or what?

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1 MR. ZAHRAIE: The floors are not even.

2 ZC MEMBER MAY: Well, floor's not even. I mean, some
3 of the finest houses in Georgetown have sloping floors. I
4 mean, that, in itself, is not a structural deficiency. It may
5 be something you want to fix, but it's not necessarily a
6 Structural deficiency.

7 MR. RUBENS: I think the main element lies in the fact
8 that, one, we did our soil tests and footing tests --

9 ZC MEMBER MAY: Right.

10 MR. RUBENS: -- and sent it out to our structural
11 engineer. He came back with a report saying that any addition,
12 even a small roof deck, would require us to do full underpinning
13 of the structure.

14 ZC MEMBER MAY: Right.

15 MR. RUBENS: And so in his opinion, he has done -- I
16 mean, his company has been in business since 1953, he has --

17 ZC MEMBER MAY: Okay. So I saw that letter.

18 MR. RUBENS: Sure.

19 ZC MEMBER MAY: And the inherent problem with that
20 letter is that you're saying that, in order to do any kind of
21 addition for which you would require relief --

22 MR. RUBENS: Yes.

23 ZC MEMBER MAY: -- will require all of this expensive
24 underpinning.

25 MR. RUBENS: Sure.

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1 ZC MEMBER MAY: So the answer to that could easily be,
2 don't do the addition.

3 CHAIRPERSON JORDAN: Right.

4 MR. RUBENS: Sir, but it was our intent prior to
5 purchasing the property, to do a partial addition of the 3rd
6 floor, or because this is within our right, but this is not
7 -- actually, even with our full 3rd floor, we stay within the
8 rights, within a matter of right, of the height of the building,
9 so we had the intent of actually expanding the square footage
10 with addition of a partial 3rd floor.

11 ZC MEMBER MAY: Right. But most of this has to do with
12 soil conditions, it doesn't have to do with the conditions of
13 the building.

14 MR. RUBENS: No, conditions of the footing, sir.

15 ZC MEMBER MAY: The footings themselves are not in shape
16 or it's the soil tests?

17 MR. RUBENS: It's a combination of the soil tests with
18 the shape and the conditions of the footing, because the
19 footings are --

20 ZC MEMBER MAY: So I mean, essentially, you've bought
21 something that's not practical to add-on to.

22 MR. RUBENS: Yes, sir, which we could only really know
23 after --

24 ZC MEMBER MAY: Right. But I mean, the fact that there
25 is a zoning envelope that would allow you to go a little taller

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1 or to add some volume to the property, I mean, that's still
2 -- I mean, yes, that exists, but you have to live within the
3 limitations of the property that you bought, and you're
4 essentially arguing that that's a reason for granting a
5 variance to the regulations.

6 I mean, if what we were talking about was an addition
7 to the property so that you could use it the way the zone is
8 intended --

9 MR. RUBENS: That's what we intended to do.

10 ZC MEMBER MAY: But that's not what you're intending.
11 What you're asking for is relief from the minimum requirement
12 in order to have a three-unit building. In order to have a
13 three-unit building, you have to have 2700 square feet.

14 MR. RUBENS: Absolutely.

15 ZC MEMBER MAY: And you're asking for relief from that.

16 MR. RUBENS: Yes.

17 ZC MEMBER MAY: That is not a matter of right. You do
18 not have a matter of right -- the ability to have three units
19 on the property.

20 MR. RUBENS: But we are, as a matter of right, allowed
21 to build a partial 3rd floor.

22 ZC MEMBER MAY: Correct. And then it's up to you to
23 afford it.

24 MR. RUBENS: Okay.

25 ZC MEMBER MAY: I mean, it doesn't add up to the case

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1 for a variance, is all it really boils down to.

2 MR. RUBENS: Okay. But, sir, isn't it so -- I mean, I
3 don't pretend to know the laws of all the regulations in detail,
4 but the self-imposed practical difficulty, which we are
5 actually debating at this point right now, isn't it so that
6 it's used for use variances and not for area variances, and
7 it has been so --

8 ZC MEMBER MAY: I never said self-imposed variance. I
9 mean, self-imposed hardship.

10 MR. RUBENS: Okay.

11 ZC MEMBER MAY: I mean, really, what you're talking
12 about is, you know, you're looking for relief in an area where
13 you haven't justified it. In order to make a case that you
14 have to convert this to three units, you have to make a
15 compelling case that there's really no other way that this
16 property can be used, and that, you know, it is absolutely the
17 only choice, and there are reasons why that's okay, and it's
18 consistent with the zoning regulations otherwise, and
19 everything else. You haven't even come close to that.

20 All you're telling us is that it is structurally
21 insufficient to support a 3rd floor. You know, you don't have
22 an absolute right to a 3rd floor.

23 MR. RUBENS: Sure.

24 ZC MEMBER MAY: I mean, you know, if it can't handle it,
25 I mean, if this was a wood-frame structure, it wouldn't have

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1 been able to handle it either. I mean, there are --

2 MR. ZAHRAIE: I think it's also important to take into
3 consideration the existing configuration of the house that was
4 used as a rooming house, and is with four bedrooms to one
5 bathroom, kitchen, a bath, that's not very standard for the
6 way houses are in Washington, D.C. today.

7 ZC MEMBER MAY: Right.

8 MR. ZAHRAIE: And in order to make that up to today's
9 standards, one has to go through all these changes that go
10 beyond a normal gut job, and includes just replacing the roof,
11 replacing the floor joists that have potential termite damage,
12 moisture damage, and we saw these repairs that were done,
13 non-code-compliant repairs, replacing all gas lines, electric
14 lines, and the history of the property's maintenance just
15 equates to, I would say, unsafe --

16 ZC MEMBER MAY: I understand that the building is not
17 in great shape.

18 MS. ZAHRAIE: There was a fire at one time.

19 ZC MEMBER MAY: Right. And how long ago was the fire?

20 MR. ZAHRAIE: There's a lot of burnt pieces in the
21 house.

22 ZC MEMBER MAY: How long ago was the fire?

23 MR. RUBENS: About eight years ago, probably.

24 ZC MEMBER MAY: About eight years ago, and so showing
25 charred beams does not necessarily mean that there's a

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1 structural deficiency. Is there a structural deficiency that
2 you can document that's related to that?

3 MR. ZAHRAIE: Well, just all the configuration will
4 have to be changed. So I'm talking --

5 ZC MEMBER MAY: So, I mean, what you're talking about
6 is normal gut job, I mean, you used the phrase gut job, okay?
7 If it's a gut job, you know, you go in there and you blowout
8 all the walls, and then sometimes you blowout all the floors
9 and the floor joists as well. I mean, that happens quite
10 frequently because people like to have new, fresh, flat things.
11 You know, they want to have all their walls flat, I mean, all
12 their floors flat, and their walls straight, and all that sort
13 of stuff, you go and you blowout everything but the brick, and
14 you basically build a new building inside of it. It's a very,
15 very common thing. I've seen two of them on my block in the
16 last year.

17 MR. ZAHRAIE: Right.

18 ZC MEMBER MAY: So you can't argue that that really is
19 an exceptional circumstance in itself, because that's kind of
20 the norm. The only thing that's slightly unusual about this
21 is that it looks like you have, you know, a bearing wall between
22 the full lift portion of the house and the backside, or at least
23 a masonry wall there. Even that, it's not actually a bearing
24 wall, typically, so I mean, it's just not adding up to a case
25 for this kind of relief.

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1 If you were talking about having to do an addition or,
2 you know, some other change that didn't touch the, you know,
3 three-unit issue, you know, maybe you could make a case for
4 it. Maybe you could make a case for filling in the, you know,
5 dogleg area or doing that addition into the dogleg area, which
6 you have shown, you know? I mean, I could almost see the case
7 for that, but the relief to get to three units is nearly
8 impossible here.

9 MR. RUBENS: But could we argue, sir, that actually --

10 CHAIRPERSON JORDAN: Well, let me say something else.
11 You also haven't presented the necessary financials to support
12 what you're trying to do. You've presented us financials on
13 condo sales, correct?

14 MR. RUBENS: That's correct.

15 CHAIRPERSON JORDAN: I have seen no alternative use
16 that might allow for relief -- use of the property without
17 additional relief, for instance, the rental.

18 MR. RUBENS: Sure.

19 CHAIRPERSON JORDAN: I don't see rental financials.
20 Did I miss them?

21 MR. RUBENS: No, sir. We don't have the intent to rent
22 --

23 CHAIRPERSON JORDAN: Okay. Oops, I didn't want to say
24 I didn't care what you intend to do, but there's certain uses
25 that are allowed within the zoning regulations. You have to

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1 show --

2 MR. ZAHRAIE: We could come up with that --

3 MR. RUBENS: Sir, and just to state for the record that
4 on 1538, which is two houses down from us, in 2013, August 2013,
5 the Board has granted relief for a six-unit rental, which they
6 have shown --

7 CHAIRPERSON JORDAN: And they may have done everything
8 that they were supposed to do to get the relief, and what Mr.
9 May is saying and what I'm trying to tell you, which you don't
10 want to listen to me --

11 MR. RUBENS: I want to listen to you, sir.

12 CHAIRPERSON JORDAN: We can just deny it right now or
13 you can get more time to provide this Board the information
14 that's necessary, so it's on you whether or not you want to
15 listen to me talk to you or you want to just tell me what we're
16 supposed to do.

17 MR. RUBENS: I gladly will provide the financials.

18 CHAIRPERSON JORDAN: All right. Well, I'm glad you
19 want to listen to that.

20 MR. RUBENS: Yes.

21 CHAIRPERSON JORDAN: We can go ahead and just vote this
22 thing down. I'm telling you that you need to supplement this
23 record with the information that Mr. May is requesting of you
24 and I'm telling you you need to present the alternative uses
25 of this property showing that you cannot do it any other way

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1 within the zoning regulations and the financials that support
2 that.

3 You came in and said you're trying to use this -- this
4 is condo. We don't want to do rental, but there's other uses
5 which are allowed within -- you might be able to do within the
6 structure where we don't have to give you relief. So I'm
7 saying these are the things, and Mr. May went through -- he's
8 been trying to tell you what you need, and you guys are pushing
9 back, and he's trying to tell you what you need to meet the
10 threshold. So he's not trying to beat you up. He's trying
11 to talk to you. We understand this is new. We understand
12 people don't go through this.

13 You did a real good job of some partial write-ups, I
14 don't know where you got the form and all that kind of stuff.
15 It's like somebody I know actually wrote this up, however,
16 there's things that are missing and I would suggest that we
17 move this for another 30 days to give you the opportunity to
18 supplement this and I want to find out what Mr. Smith has to
19 say before we do that because I don't know if he has the
20 opportunity of coming back. And I think, Mr. Jesick, we
21 already had his report, and I don't think anybody else -- and
22 I think he'll be agreeing on what we're telling you. He's
23 already written that in his report, it's just not there yet,
24 and you guys moved forward.

25 So if that's okay with the Board, but I want to hear from

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1 Mr. Smith first. Is that okay with the Board?

2 ZC MEMBER MAY: I would like to -- I mean, we'll complete
3 everything else in the hearing, right, and then we'll just wait
4 for further information from them?

5 CHAIRPERSON JORDAN: Yes, we can do that.

6 ZC MEMBER MAY: Yes.

7 CHAIRPERSON JORDAN: So any other questions of the
8 Applicant, because there's additional information. We're
9 going to have to come back with this anyway. Mr. Jesick,
10 anything you need to add to your report?

11 MR. JESICK: I think the Board has hit on the major
12 points. We felt that it fell short in the practical difficulty
13 area. I actually thought that they did present some
14 compelling information. Where we fell a little short was, you
15 know, that purchase price and it was a purchase based on a
16 matter-of-right scenario or was it purchased with the intent
17 of achieving a third unit? So we just needed more data to back
18 that up, backup the purchase price, and was there a repair
19 contingency included in their initial, you know, pro formas?

20 Where we also felt that the application maybe fell a
21 little short was in the detriment to the zoning regulations.
22 The R-4 is intended to be a one-family dwelling zone and is
23 not anticipated to be an apartment zone, as contemplated under
24 the R-5 zone, so that's where we also felt that the application
25 maybe didn't quite cross the threshold, so that's why we

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1 couldn't recommend approval of the project.

2 CHAIRPERSON JORDAN: Questions of Planning from the
3 Board? Applicant, questions of Planning? Department of
4 Transportation? Submitted a letter of no objection. ANC-6E,
5 they filed a report in support. You also submitted some
6 letters in support. I didn't see letters of support of the
7 immediate neighbors though. I saw from other folks. I didn't
8 see, like, the very next door neighbors, so it'd be good to
9 have something like that added to the record.

10 Anyone else wishing to speak in support of this
11 application? Anyone in support? Anyone in opposition? Mr.
12 Smith?

13 MR. SMITH: Again, I own the property --

14 CHAIRPERSON JORDAN: Your microphones need to be --
15 push the button, please.

16 MR. SMITH: Again, I own the property next door.

17 CHAIRPERSON JORDAN: Right next door?

18 MR. SMITH: Right next door. What it is, they were
19 buildings that were built 100 years ago, like everything else,
20 and they're mirror images of each other. When I bought back
21 several years ago, we went and we had to gut our properties,
22 and we put all new joists and everything, it was all new, from
23 the ground, from the dirt, all the way up. It sounds like from
24 here, to be truthful, you bought it too high. That's the
25 bottom-line.

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1 I looked at the plans. You can look at one of the plans,
2 either the front of the plans, the buildings are about 20-foot,
3 maybe 25-foot, high. I guess they submitted these to you, the
4 drawings? They're about 20-foot high. They want to go up to
5 almost 40-foot, you know, on the front, and then the back,
6 they're using the windows on the 3rd floor, the windows are
7 on the side. So if there's ever one day that I decided to go
8 to the Board and get a variance to add a 3rd floor, all those
9 windows would be blocked.

10 I don't understand how you can put windows on the side
11 of a townhouse. It's not an end unit townhouse. That's going
12 to be a problem. Three units, again, they're made for two
13 units. The three units are going to be more difficult, and
14 then also, the parking there, it's only two spots in the back
15 for any cars, so there wouldn't be any other parking. You
16 mentioned about shoring up the footings. The footings are,
17 I imagine, on that common wall between our -- so without doing
18 any damage to my property, I don't know what they're going to
19 do with the footings.

20 You know, the back of the properties, again, they have
21 40-foot high, ours are -- we have a deck on the back, but on
22 the back of theirs, they have, you know, a 3rd-floor deck and
23 a 4th-floor deck, plus they have this, like, penthouse up here
24 on the top, so again, if you're out trying to enjoy a barbecue,
25 and you have someone from, you know, another 20-foot high

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1 looking down at you, it's a little uncomfortable.

2 I think the massing is just too much for the project.
3 Those are the main, you know, criteria for it.

4 CHAIRPERSON JORDAN: Okay. Board, any questions of
5 Mr. Smith? So this property was, prior to this new ownership,
6 occupied?

7 MR. SMITH: It was occupied like a -- it was like how
8 -- they rented out individual rooms, but nothing was ever done
9 to it ever since I had gotten there, at least ten years. You
10 know, a lot of the neighbors called the city on the owner, and
11 that's why he sold it as-is, because he never did any repairs
12 to anything. In the front of the building, the facade is
13 starting to come off now on the main structure.

14 CHAIRPERSON JORDAN: And when was the fire?

15 MR. SMITH: I don't know. It's at least ten years. We
16 actually had a fire when we were doing construction, and that
17 back, like, in '05, but I don't know if that went into their
18 unit, into the other unit or not, but there was another fire
19 before that, because I bought it as a fire -- it was a fire
20 -- you know, there was a fire in the unit and that's why it
21 was vacant at the time, and this was back, like, in '05 or so,
22 but there was a fire, whether it was, like, in 1990 or 1980,
23 I don't know when, but it couldn't have been that much damage
24 in the property for the fire.

25 Well, yes, but you can see the back of it. It's not like

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1 it's hidden.

2 CHAIRPERSON JORDAN: Board, any other questions of Mr.
3 Smith? Anyone?

4 ZC MEMBER MAY: Yes, I just want to clarify a couple
5 things. I mean, you know, any windows that they build on the
6 side of your property, if you want to build up to a 3rd floor,
7 the would lose their windows. I mean, it's called an at-risk
8 window.

9 MR. SMITH: Oh, okay.

10 ZC MEMBER MAY: And that's a cost they'd have to do.
11 Underpinning, there's a process for underpinning when you have
12 a party wall. It's a permitting thing that you have to go to.
13 In terms of parking, they would be compliant in parking because
14 you're only required to have one parking space per two units,
15 so with three units, two spaces meets that requirement.

16 MR. SMITH: They would be okay?

17 ZC MEMBER MAY: So I mean, it meets the zoning. I mean,
18 the real issue here is adding that third unit and whether that's
19 appropriate or not. In terms of the height and then the
20 penthouse above it, those things are, you know, they're within
21 the zoning envelope there. They're not asking --

22 MR. SMITH: The current zoning envelope?

23 ZC MEMBER MAY: Yes. They're not asking for relief in
24 those areas, including the penthouse, which is an issue that's
25 under study, and if you really want to learn more about it,

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1 you can come to the Zoning Commission on Thursday night,
2 because we're taking that up again, but anyway, I just wanted
3 to clarify those points.

4 MR. SMITH: Okay.

5 ZC MEMBER MAY: Those are all, I mean, valid concerns,
6 but there are -- you know, some of those things are addressable
7 through the rest of the process of getting something built.
8 Thanks.

9 CHAIRPERSON JORDAN: Okay. Thank you, Mr. Smith.
10 Anybody else wishing to speak in opposition? Anyone in
11 opposition? Then we would turn back to the Applicant for
12 rebuttal if you -- or because we're going to ask for additional
13 documentation, I think I'm going to reset this. We can give
14 you an opportunity to respond at that point.

15 MR. RUBENS: Thank you.

16 CHAIRPERSON JORDAN: But, Mr. Moy, do we have a new date
17 on this? And we need to get from you --

18 MR. MOY: Yes.

19 CHAIRPERSON JORDAN: I hope you took notes of what Mr.
20 May said, but I definitely need to see the alternative uses
21 and since you're making a financial argument, what those things
22 cost, and how it affects the property, and why you cannot use
23 it for that purpose, as well as single-family. I think Mr.
24 Jesick said, and I didn't even think about it, why you can't
25 use it as a single-family, what have you. Anybody else need

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1 anything in particular? I think Mr. May --

2 ZC MEMBER MAY: I think that the -- if there's any hope
3 of making the argument that this is the only viable use, you
4 need to demonstrate the structural deficiency of this and the
5 letter that you submitted is not sufficient. I would also say
6 that I'm not personally going to be swayed by the economic
7 argument. I mean, to me, it seems like the Office of Planning
8 and Mr. Smith kind of put the nail on the head that, you know,
9 you paid too much for the property.

10 It may have been that somebody else would have paid too
11 much as well, but, you know, at that price, if you can't make
12 it work with the two units that you're entitled to, I'm not
13 sure that there's anything that the zoning regulations should
14 do, or the BZA should do, to help you. I'm very, very skeptical
15 about economic arguments to being with and our experience of
16 the Zoning Commission is that when it comes to conversions of
17 flats, which is what this is, as a matter of right, two units,
18 into apartments, is a highly contentious issue across the city.

19 And, you know, we stepped into that only very, very
20 carefully and we're proposing to make some changes to that,
21 none that would affect this property, as I understand it, but
22 it is a highly contentious issue and I think that, in effect,
23 granting zoning relief because, you know, the property sold
24 for too much money is feeding something -- feeding a phenomenon
25 in the city that we do not want to encourage. We don't want

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1 the prices to be going up so crazy that the only way you can
2 make it work is to build three units.

3 So I am very skeptical that you could submit anything
4 that would persuade me to vote in favor of the project, but
5 at the very least, much more significant documentation about
6 why the building cannot be -- that it would be too expensive
7 to use as it is or too extensive, not expensive, but the work
8 to fix it structurally is too extensive, that the only way to
9 do it is to make it into this very large apartment.

10 MR. RUBENS: Okay.

11 CHAIRPERSON JORDAN: So with that, still, the
12 financials, as I requested you to do, and the support on the
13 Structural issues that support where you are, and you got to
14 see, when we get that, we'll review it, and we're going to put
15 this back up for a hearing, Mr. Moy?

16 MR. MOY: Yes, sir. That would be May the 19th, sir.

17 CHAIRPERSON JORDAN: Is that enough time? That's --

18 MR. MOY: Well, Peter's going to be here at that time.

19 CHAIRPERSON JORDAN: What's Peter's next time?

20 MR. MOY: May 19th.

21 CHAIRPERSON JORDAN: What's Peter's next time after the
22 19th? We don't know yet, do we?

23 MR. MOY: Probably be July something.

24 CHAIRPERSON JORDAN: If you think you have enough time
25 to do it for May 19th?

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1 MR. ZAHRAIE: Yes, sir.

2 CHAIRPERSON JORDAN: But the documents have to get in
3 no later than May 12th. Well, you need to get to Office of
4 Planning so they can look at it and review it too, so you need
5 to be in constant contact with them, but we need the documents
6 here by May 12th, right, Mr. Moy?

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

8 MR. RUBENS: Can I ask a quick question, sir? When you
9 mentioned alternative uses, did you refer specifically to the
10 rental option that we talked about or --

11 CHAIRPERSON JORDAN: I need to see what -- well,
12 certainly, that, but have conversation with Planning, if they
13 will talk to you, but you see what the other things are allowed
14 in that particular zone, and why you cannot do it. Okay?

15 MR. MOY: Sir, did you set this for a decision or a
16 continued hearing?

17 CHAIRPERSON JORDAN: I'll think I'll need to do a
18 hearing.

19 MR. MOY: Okay.

20 CHAIRPERSON JORDAN: Okay? Good. Thank you all for
21 coming. Thank you, Mr. Smith, for taking the time. I was
22 wondering why I didn't have next door neighbor letters. And
23 if you can get next door neighbor letters, that's even more
24 important, because I see you got folks around the block, but
25 I don't see, you know, people who are touching you. All right?

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1 MR. RUBENS: Thank you.

2 CHAIRPERSON JORDAN: We're good. Before we -- sit
3 tight. And you guys can go. Thank you very much. Okay. We
4 got a couple of homework that the Board has to do. A couple
5 of things. I'm doing two meeting announcements or Cliff would
6 beat me up. In accordance with Section 405 of the Open
7 Meetings Act of D.C. Official Code Section 576, I move that
8 the Board of Zoning Adjustment hold closed meetings on the
9 Mondays of May 4th, 11th, and 18th. These meetings start at
10 4:00 p.m. and be held for the purpose of obtaining legal advice
11 from our counsel, and deliberate upon, but not voting on cases
12 scheduled to be publicly heard and decided by the Board on the
13 day after each closed meeting, which are telephonic meetings.

14 Those cases are identified in the Board's public hearing
15 agenda for May 5th, 12th, and 19th. Closed meeting for this
16 purpose is permitted under Administrative Procedure Act. Is
17 there a second?

18 VICE CHAIR HEATH: Second.

19 CHAIRPERSON JORDAN: There's a motion and there's a
20 second by Ms. Heath. Will the Secretary please take a roll
21 call vote on the motion?

22 MR. MOY: Yes, sir. When I call the Member's name, if
23 you could reply with yes or no. Mr. May?

24 ZC MEMBER MAY: Yes.

25 MR. MOY: Vice Chair Heath?

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1 VICE CHAIR HEATH: Yes.

2 MR. MOY: Chairman Jordan?

3 CHAIRPERSON JORDAN: Yes.

4 MR. MOY: Mr. Hinkle?

5 BZA MEMBER HINKLE: Yes.

6 MR. MOY: We have a Board seat vacant. The motion still
7 carries, sir.

8 CHAIRPERSON JORDAN: As it appears, the motion has
9 passed. I request that the Office of Zoning provide notice
10 of these closed hearings in accordance with the Act. Number
11 two, as Chairperson of the Board of Zoning Adjustment in the
12 District of Columbia, in accordance with Section 407 of the
13 Administrative Procedure Act, I move that the Board of Zoning
14 Adjustment hold a closed meeting on Tuesday, June 2nd from 9:00
15 a.m. to 12:30 for the purpose of conducting internal training
16 pursuant to Section 405 of the Open Meetings Act. Is there
17 a second?

18 VICE CHAIR HEATH: Second.

19 CHAIRPERSON JORDAN: Motion made and second. Will the
20 Secretary roll call the Board?

21 MR. MOY: Yes, sir. When I call the Member's name, if
22 you would please reply with a yes or no. Mr. May?

23 ZC MEMBER MAY: Yes.

24 MR. MOY: Vice Chair Heath?

25 VICE CHAIR HEATH: Yes.

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1 MR. MOY: Chairman Jordan?

2 CHAIRPERSON JORDAN: Yes.

3 MR. MOY: Mr. Hinkle?

4 BZA MEMBER HINKLE: Yes.

5 MR. MOY: The motion carries, sir.

6 CHAIRPERSON JORDAN: I hereby request that the Office
7 of Zoning provide the notice in accordance with the
8 Administrative Procedural Act. Is there any other business
9 coming before the Board?

10 MR. MOY: I just want to take a moment, Mr. Chairman,
11 and I know you want to leave really quickly.

12 CHAIRPERSON JORDAN: I was gone.

13 MR. MOY: It's just for the staff and for the record,
14 the Board is going to schedule a filing of a reconsideration
15 to Case Number 18787, Rear W Street, LLC for June the 9th.
16 Thank you, sir.

17 CHAIRPERSON JORDAN: Okay. Is there anything else?

18 MR. MOY: No, sir.

19 CHAIRPERSON JORDAN: All right. Then we are
20 adjourned. Thank you, everyone.

21 (Whereupon, the hearing in the above-entitled matter
22 was concluded at 1:21 p.m.)

23

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