

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 5, 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 10:03 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 MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

MATTHEW LeGRANT, Zoning Administrator
CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

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KAREN THOMAS
ELISA VITALE
MEGAN RAPPOLT

The transcript constitutes the minutes from the
Public Hearing held on May 5, 2015.

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

(10:02 a.m.)

BZA CHAIR JORDAN: I think since we have the zoning administrator here and I know his day is -- let us try to get those two cases dealt with. We have one zoning administrator and 12,000 applicants a day over there, so I don't want to hold him all day.

Let me see which one of these appeals. We have two appeals, unusually, two appeals on the docket for today. Let's call the first one.

MR. MOY: All right, sir. That would be applicant, or rather appeal application number 18991 of John Stokes. And yes, well that's, this is the appeal of the Zoning Administrator's Building Permit number B as in bravo, 1503050 at premises 1521 Varum Street Northwest, Square 2698 Lot 817.

BZA CHAIR JORDAN: Thank you. Give me one second.

(Off microphone comments)

BZA CHAIR JORDAN: Okay. Will you please identify yourselves?

MR. SULLIVAN: Good morning, Mr. Chairman and Members of the Board. My name is Martin Sullivan with the law firm of Sullivan and Barros here on behalf of the property owner of 1521 Varum Street, Northwest.

(Off microphone comment)

BZA CHAIR JORDAN: Just make sure your microphone is on,

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1 please.

2 MR. WENG: Good morning, Chairman, Members of the
3 Board. Henrik Weng, resident, 1520 Webster Street.

4 BZA CHAIR JORDAN: The last name again?

5 MR. WENG: Henrik Weng, W-E-N-G. And a neighbor to the
6 Appellant.

7 MR. STOKES: Good morning. I'm John Stokes, I'm the
8 Appellant and I live at 1519 Varnum Street, Northwest.

9 MR. LeGRANT: Good morning. Matt LeGrant. I'm the
10 Zoning Administrator, DCRA.

11 MR. TONDRO: Maximilian Tondro, SS and general counsel
12 of the DCRA.

13 BZA CHAIR JORDAN: All right. I really don't know
14 where to start with this. I'm having some difficulties with
15 this appeal, Mr. Stokes. One of the issues is that you did
16 a shotgun approach to allegations of error by the Zoning
17 Administrator. I really have problems with that.

18 We require specific challenges to the decision of the
19 Zoning Administrator and not just list the various sections.
20 So he violated, you know, 401, 403, 400, but specific
21 allegations about how those particular sections were violated.

22 I know there are some issues with, if you were not here
23 before, understanding how this process really goes. But we
24 really require those specificity in the appeal process. That
25 being said, there has not been any objection raised by the owner

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1 nor DCRA regarding that to my knowledge about the specificity.

2 In fact, there's been response to that by the parties.
3 And their interpretations are what you were saying by that.

4 (Off microphone comment)

5 BZA CHAIR JORDAN: All right, so I've been corrected
6 that the owner did raise it in the paper. So yes, they raised
7 it but did I, Mr. Sullivan, are you for the owner, is that what
8 you told me?

9 MR. SULLIVAN: Yes, sir.

10 BZA CHAIR JORDAN: Okay. You didn't raise it by a
11 motion to dismiss. You just responded to, and that was what
12 was placed, right?

13 MR. SULLIVAN: Yes, that's correct.

14 BZA CHAIR JORDAN: That was my point. So yes. It
15 wasn't a request for a procedural or summary dismissal of the
16 application, I mean the appeal. So let's do this. Let me turn
17 now to the appellant and find out what you're alleging is the
18 specific violations?

19 MR. STOKES: Can I give a short testimony and then --

20 BZA CHAIR JORDAN: That's what you're doing.

21 MR. STOKES: Okay.

22 BZA CHAIR JORDAN: Well, go through your testimony,
23 provide it to us and then we will try to help cipher that out.

24 MR. STOKES: Okay, thank you.

25 BZA CHAIR JORDAN: And I understand that it's certainly

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1 for a lay person or whatever this is, this is some difficult
2 --

3 MR. STOKES: Yes, this whole process has been very
4 difficult.

5 BZA CHAIR JORDAN: And zoning is so technical, and it
6 goes back to --

7 MR. STOKES: Yes, sir.

8 BZA CHAIR JORDAN: It goes back to where we've preached
9 that we need some type of ombudsman or something somewhere that
10 can help people get through this process. The Board just can't
11 provide that kind of guidance, but I certainly understand.
12 And what I was saying earlier is not to chastise, but you know,
13 there's the technical stuff.

14 MR. STOKES: I will try to cut down on some of my
15 testimony.

16 BZA CHAIR JORDAN: You do what you think you need to do.

17 MR. STOKES: Okay. Good morning, Chairperson Jordan,
18 Vice Chair Heath, Board Member Hinkle, Zoning Commissioner
19 Chair Hood, and Member Moy. Thank you for the opportunity to
20 present to you my case against the decision of the Zoning
21 Administrator to grant a permit to build two apartment
22 buildings at 1521 Varum Street, Northwest, next to my house
23 in Northwest D.C.

24 This whole ordeal has been extremely time consuming,
25 money draining, mind boggling, bureaucratic maze of a journey

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1 that I would not wish on anyone. I am not a lawyer, I am not
2 an architect, I am not an engineer.

3 I hope that my case can be a learning lesson for all the
4 unfortunate residents of the District of Columbia that face
5 destruction of their homes and really do not know what to do
6 to protect themselves or their property.

7 The true story of how we arrived here today is shocking,
8 and it is extremely important that the history of this debacle
9 be told so that others have a clear understanding of how this
10 system works, or lack thereof.

11 While this is a zoning hearing, it would be misguided
12 and irresponsible to not consider the building code violations
13 that led us to this point. The fact of the matter is that were
14 there were not misapplication and misinterpretation of the
15 building codes and failure to enforce those same codes, we
16 might not be here today.

17 On January 13th, 2015 a neighbor came to visit me. He
18 told me that there were two apartment building structures
19 proposed that would be three or four stories with seven two
20 bedroom and den units. The proposed apartment building would
21 rise over my house and the neighborhood, and extend the length
22 of our backyards.

23 I have submitted a sample of a pop up in my appeal. In
24 essence, imagine a boat being built beside your house, for
25 those of you that have houses. I did not believe my neighbor

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1 and laughed, nice joke.

2 He was not laughing. He pulled out a listing that was
3 on Redfin and showed me the proposed sale of the property. He
4 said it would be a pop up. I had not heard that word before
5 as it relates to a building, but it's a word I have heard every
6 day since.

7 I thought how could this happen? How could anyone do
8 this without proper notification to me? I thought I work for
9 the District Government as the Chief of Staff in a District
10 Department of Parks and Recreation.

11 And one thing I know is that any proposed construction
12 must have neighbor and resident input. I learned that day that
13 there was a thing called matter of right. What I did not know
14 was that matter of right presented developers with a means to
15 circumvent the system so they could forge ahead with buildings
16 that had little to no input from the homeowners directly
17 impacted by these developments.

18 Forget residents or ANCs. They did not have to be
19 notified at all. One of the most bewildering things I found
20 out is that before my neighbor contacted me, this building was
21 going full force ahead. Plans had been drawn, permits had been
22 granted, and the D.C. Office of Regulatory Affairs, DCRA
23 thought everything was in order.

24 DCRA does not currently have a system in place to ensure
25 that indeed everything is in order, starting with the

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1 notification process. Developers can say that they've
2 informed homeowners who live next door that they are proposing
3 a project, but there's no proof that they have.

4 The big scheme so many residents have experienced is to
5 send a one page notification letter without sending
6 construction documents so you have no idea what is really
7 happening.

8 I was informed by my neighbor that the Zoning Commission
9 hearing was taking place on Thursday, January 15th. I
10 testified at that hearing in support of 1411 which would change
11 the zoning regulations on pop-ups, and my testimony should be
12 available.

13 As the owner and resident of a single family attached
14 road dwelling located at 1519 Varnum Street, Northwest, in the
15 neighborhood of 16th Street Heights, an R4 residential
16 district, I am submitting this appeal regarding permits
17 granted and a decision made by DCRA Zoning Administrator
18 Matthew LeGrant about 1521 Varnum Street. You should already
19 have attachments and images to support that.

20 While this is a zoning hearing, everyone needs to be
21 aware of how what happens at DCRA has a strong relationship
22 with what happens to zoning. I received an initial letter on
23 September 12th, 2014.

24 It did not contain any construction documents, was in
25 a form that did not look official. Indeed, the contact

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1 information was handwritten and the DCRA logo barely legible.
2 Not receiving the construction documents at that time was a
3 violation of DCMR Code 3307.2.1, Form of Notification.

4 This notification shall include a copy of all
5 construction documents which relate to the structural support
6 of the adjoining building or it or other structure or to the
7 structural support of the excavation including any updates or
8 amendments to the work plan that have been submitted with the
9 permit application.

10 I would have raised my concerns at that time if I was
11 fully aware what was being proposed. The notification form
12 was not sufficient to alert residents about what is expected,
13 and is misleading. I did not know what I was agreeing to.

14 I received notification of the proposed construction at
15 1521 Varnum Street, Northwest on January 16th, 2015, after the
16 zoning permit for the project was already granted on December
17 31st, 2014, along with the proposed plans for which I have 30
18 days to sign granting the builder access to my property. You
19 should have an exhibit of that as well.

20 I submitted to DCRA and the developer a letter stating
21 my hesitation to sign the notification letter. I asked for
22 full-scale plans and assistance in understanding the plans.
23 The time frames for submission to submit my BZA appeal and to
24 try to figure out if the notification form were a serious
25 constraint for me.

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1 Again, as I said, I am neither an attorney nor a
2 contractor. I have very limited knowledge of how the system
3 works. There is no way I could have reasonably known about
4 the full scope of this project until I was sent the plans on
5 January 16th.

6 There was no way I could have reasonably known about the
7 permits being granted on this project. I was not aware that
8 an appeal would cost \$1,040. I did not have \$1,040 to pay for
9 the appeal, and needed to have the whole 4C ANC committee hold
10 a meeting to vote on assisting with the appeal.

11 ANC 4C voted unanimously to support my appeal, and an
12 overwhelming majority, nine out of ten ANC 4C Commissioners
13 voted to submit the application for this BZA appeal. I did
14 meet with the developer's attorneys from Sullivan and Barros
15 around mid-February.

16 I did not have funds to hire a structural engineer. I
17 was forced to hire an attorney to try to figure out what was
18 going on. I do not have the means to keep an attorney on
19 retainer, and since I am neither an attorney, structural
20 engineer, or contractor, all of this is very confusing.

21 After speaking with an engineer, he asked me where was
22 the underpinning designs and the structural designs for the
23 proposed apartment building. He informed me that I was
24 supposed to receive those as well when I was sent the
25 construction documents on February 16th. I did not know this.

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1 After conferring with DCRA, I found that indeed I should
2 have received those documents as well. A stop work order was
3 placed on 1521 Varnum Street on March 31st, 2015 for violation
4 of not providing me with all the construction documents, which
5 may have a zoning impact. And you should have a copy of that
6 stop work order.

7 And more about the first stop work order a little later.
8 But from my limited but growing understanding of the
9 regulations listed in this appeal are reasons that the building
10 permit number B1503050 should be revoked.

11 The residential, single family, attached row house
12 located at 1521 Varnum Street has been permitted to allow an
13 apartment building to be built. Mr. LeGrant, DCRA Zoning
14 Administrator, ZA, has approved the construction of a three
15 story, seven unit building. Each unit is two bedroom, two and
16 a half bath, with den.

17 This equates to a 21 toilet, 28 sink, 14 bathtub, 7
18 dishwashers, 7 garbage disposals, 4 parking space apartment
19 building with balconies, double roof decks, rear parking lot,
20 all in the house that was meant to be a single family home.

21 The existing single family home structure will be
22 converted into a wholly new additional building, while a wholly
23 -- sorry. The existing single family home structure would be
24 converted while a wholly new additional building would be
25 constructed and added onto the converted structure.

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1 The construction of this building will not only affect
2 my property, but all the residential properties both on Varnum,
3 16th, and Webster Streets Northwest, and the neighborhood.

4 While we are all aware that the matter of right
5 construction is not subject to community input with the
6 construction of a new building in a residential neighborhood,
7 that matter of right rule absolutely needs to be reviewed. It
8 basically says residents don't have a right.

9 How would you feel if someone built a building next to
10 your house and the explanation was well, the developer can do
11 this as a matter of right.

12 The ZA, getting to the zoning appeals, the ZA refers to
13 BZA Order number 18108 for a discussion of subsection 407.1(b)
14 as it relates to minor lot area regarding minor flexibility
15 for minimum lot area 1521 Varnum Street Northwest in a letter
16 dated August 11th, 2014 addressed to Martin P. Sullivan, Esq.
17 of Sullivan and Barros, LLP who represents the developer
18 variously named on building permits issued by DCRA as of this
19 date, Westing Development. You have a copy of the letter, as
20 well.

21 Even though the ZA has approved of a minor flexibility
22 for minor lot properties, there are errors in the
23 administrative decision. The ZA speaks of a granting of
24 relief to the regulations due to the "uniqueness of this
25 property compared to surrounding properties."

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1 Indeed, this proposed development would destroy the
2 character of the neighborhood and is unique in the most awful
3 way. The ZA states the primary purpose of an R4 district shall
4 be the stabilization of remaining one family dwellings.

5 While these are his words, the actions he has taken run
6 completely contrary protecting single family dwellings.
7 Later in the same letter, the ZA goes on to grant minor
8 flexibility pursuant to 407.1 from the minimum lot area
9 requirements 401.3, for the development of a seven unit
10 condominium building.

11 In justifying the minor flexibility, the ZA states a
12 single Board of Zoning Adjustment, BZA decision, Order number
13 18108, Exhibit number 5 where the BZA affirmed a decision to
14 the ZA of the ZA to grant a deviation from the minimum lot area
15 requirements so as to alleviate the need to seek de minimis
16 zoning relief from the Board.

17 The ZA also does not accurately address the matter of
18 right for a seven unit building. I believe a matter of right
19 is the consideration for the six units and not seven units.

20 In BZA order number 18108, the BZA affirmed the decision
21 of the Zoning Administrator in granting a deviation under
22 407.11 from the minimum lot area requirements allowing a single
23 record lot to be divided into two separate buildable record
24 lots, despite one of the lots being shorter than the required
25 5,000 square foot --

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1 BZA CHAIR JORDAN: Let me help you out a little bit, Mr.
2 Stokes.

3 MR. STOKES: Yes.

4 BZA CHAIR JORDAN: We're aware of the cases.

5 MR. STOKES: Okay.

6 BZA CHAIR JORDAN: You don't really need to spend your
7 time talking about cases cite because you need to hit the
8 substance of yours. I think that would be more helpful to you.

9 MR. STOKES: Okay.

10 BZA CHAIR JORDAN: That's just my suggestion, but it's
11 up to you.

12 MR. STOKES: Okay. Then I'm going to okay, you know the
13 case, you know the differences. Well it was determined, okay
14 so I'm going --

15 BZA CHAIR JORDAN: Don't let me throw you off. Do what
16 you were going to do. I was just suggesting how you spend your
17 time wisely.

18 MR. STOKES: Okay, thank you. There is no comparison
19 to be made in the case of BZA Order number 18108 and the proposed
20 construction at 1521 Varum Street. The differences are as
21 follows.

22 The two story, single family dwelling situated in the
23 R4 residential district of 16th Street Heights is a
24 semi-attached row house, a structure built as a row of four
25 in the 1920s. The row houses have deep covered front porches

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1 and two very sturdy exterior property walls effectively
2 bracing either end of the row of four two story, single family
3 dwellings.

4 All four residents have chimneys, two large chimney and
5 roof structures brace the end row homes. The masonry party
6 walls of the four dwellings measure approximately seven inches
7 with thicker exterior walls buttressing the construction at
8 1521 and 1515 Varnum Street respectively.

9 The style of row home, a two story, single family
10 dwelling is in keeping with the rest of Varnum Street, a narrow
11 residential street with narrow lots and zoned residential
12 parking.

13 The property at 1521 Varnum Street was continuously
14 occupied until the owner placed the property on the market in
15 2014. It is an improved lot and the dwelling is habitable.
16 The residential single family dwelling on the other side of
17 1521 Varnum at 1529 Varnum Street falls into the R1(b)
18 residential district, as does the attached single family home
19 at 1531 Varnum Street Northwest.

20 I won't talk about the other ones. 1521 Varnum Street
21 is in a R4 residential district, as is the attached, occupied
22 residential house dwelling at 1519 Varnum Street, which is my
23 house.

24 The single family row house dwellings directly across
25 the street from 1521 Varnum Street and in the rear of the

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1 property which are attached, occupied, improved single family
2 dwellings at 1520 Webster, 1518 Webster, and 1516 Webster are
3 also in the R4 Residential district.

4 These properties share a narrow service alley and face
5 the back of the residences at 1519 Varnum Street and 1521 Varnum
6 Street. The attached row house dwelling at 1521 is not on a
7 block corner, but is visible from the corner of 16th and Varnum
8 Streets.

9 The 16th Street Heights neighborhood is a quiet,
10 established, residential row house neighborhood with mature
11 trees, well maintained yards, and quiet neighbors who have
12 lived in the neighborhood for many years.

13 There is a mix of Section 8 housing, multi-family
14 housing, halfway homes and rental properties along with
15 multi-generational, single family owners within a quadrant of
16 four blocks running from 16th Street to 14th Street Northwest
17 and Varnum and Webster Streets.

18 Properties in the immediate vicinities of the subject
19 property are small lots with improved two story, one family
20 attached dwellings. The neighborhood has above ground
21 communications utility lines running along the streets.

22 The ZA, in his letter to Mr. Sullivan, mentions that the
23 original proposed development of 1521 Varnum Street would
24 consist of an addition to the existing structure and a
25 conversion to a seven unit apartment building, and that the

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1 proposed development would comply with lot occupancy side
2 yard, height, and all other requirements.

3 Mr. LeGrant states I have not reviewed this proposal for
4 compliance with any other, for any requirements other than the
5 minimum lot area requirements under 401. The minimum lot area
6 for an apartment building in an R4 district is not into square
7 feet. I won't go into 401 because I'm sure you know what 401
8 states.

9 The ZA writes that pursuant to 407.1 of the zoning
10 violation, the Zoning Administrator is authorized to permit
11 a deviation --

12 (Simultaneous speaking)

13 BZA CHAIR JORDAN: -- regulation. Just so the record
14 reflects. It's not zoning violation, zoning regulation.

15 MR. STOKES: Oh, the pursuant to 407.1 of the zoning
16 regulation, sorry, the Zoning Administrator is authorized to
17 permit a deviation not to exceed two percent of the area
18 requirements of 401 for a minimum lot area dimension provided
19 that the building shall be allowed to deviate, you know what
20 the rule states.

21 Being only approximately 0.33 percent short of 6,300
22 square feet, the property is eligible for Zoning Administrator
23 flexibility, provided that conditions A and B above are
24 satisfied.

25 In my opinion, Mr. LeGrant says, this proposal does meet

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1 those conditions. The ZA confirms that the proposal by the
2 developer will otherwise comply with all other applicable
3 zoning regulations.

4 The degree of deviation requested in his view will have
5 no apparent impact on adjacent properties, and can be
6 considered virtual compliance and apartment lot area
7 requirements, as the required land area to support seven units
8 measures 99.66 percent.

9 As the residing owner of the attached row house at 1519
10 Varnum Street Northwest, I must respectfully disagree with Mr.
11 LeGrant's findings, comparisons, and decisions regarding the
12 approval to grant minimum lot area for 1521 Varnum Street so
13 that an apartment building can be constructed.

14 The argument of granting flexibility in minor and
15 minimum lot use, using as an example the division of one
16 property lot into two to build two single family homes with
17 front, side, and rear yards in the R1-5 residential district
18 cannot be compared to the granting flexibility in minimum lot
19 use in the construction of a 21 toilet apartment building in
20 the R-4 residential district.

21 In granting an allowance of 0.33 percent as an exception
22 did not hinder square foot allowance per apartment unit in the
23 R4 residential district ruling under 401.11 has not been met
24 at the approved 897 square feet per unit.

25 In approving the allowance of 0.33 as an exception, the

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1 entire lot at 1521 Varnum Street Northwest is being used to
2 build a seven unit apartment building, ignoring the
3 requirements as stated in 404 and 405 regarding side and rear
4 yards.

5 While this property will only have one side yard, it will
6 also be used as egress for housing, and for exterior trash cans.
7 So 404.1, a rear yard shall provide for each structure located
8 in a residents district, the minimum depth of which shall be
9 set forth in the following table, minimum depth of a rear yard
10 is 20 feet for the R4. 405.3 is very important. In R2, R3,
11 R4 --

12 BZA CHAIR JORDAN: Let me stop you. On the 404.1 rear
13 yard, what's the requirement for rear yard?

14 MR. STOKES: For my yard?

15 BZA CHAIR JORDAN: For the rear yard for this property.

16 MR. STOKES: Twenty feet.

17 BZA CHAIR JORDAN: All right. What is your rear yard?

18 MR. STOKES: Twenty one feet.

19 BZA CHAIR JORDAN: Okay. So you're at 405.

20 MR. STOKES: I was --

21 BZA CHAIR JORDAN: Yes, yes. So you're also citing a
22 violation of 405.

23 MR. STOKES: Yes. So --

24 BZA CHAIR JORDAN: Okay. Yes, go ahead.

25 MR. STOKES: Okay. In R2, R3, R4, and R5 districts,

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1 when a one family dwelling, flat or multiple dwelling is
2 erected that does not share a common division wall with an
3 existing building or a building being constructed together
4 with the new building, it shall have a side yard on each
5 resulting freestanding side.

6 The new apartment building does not share a common wall
7 with my property. The original structure indeed does share
8 a party wall. But there is, this new building, if I'm
9 misunderstanding, there is freestanding sides on each side of
10 this new structure.

11 So that's 405, but in 405.4 it says accepted and provided
12 in 405.1 in an R5(a) district, one side yard shall be provided
13 for all structures unless the structure is an apartment house
14 containing three or more dwelling units per floor, in which
15 case two side yards shall be provided each with a minimum width
16 set forth in 405.9. That's my 405.

17 A first stop work order was issued for 1521 Varnum Street
18 Northwest on February 2nd, 2015 pertaining to the rooftop
19 elevation design, a violation of 400.7. The proposed parking
20 lot for four cars in a narrow service alley with an exit to
21 the parking lot --

22 BZA CHAIR JORDAN: Can you finish your rooftop
23 allegation? You raised 400.7 and then you paused, and then
24 you went to parking. I'm listening to you, I just want you
25 to know. All right. So, I mean, that's okay.

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1 MR. STOKES: No, no, no. I'm going to -- 400, heights
2 of buildings or structures, 400 I don't have to repeat the code
3 to you, right, 402.7. Okay.

4 BZA CHAIR JORDAN: Don't repeat the code.

5 MR. STOKES: Okay. Thank you. The eastern and
6 western exterior walls of the rooftop penthouse structure
7 shown in the rooftop deck plan on Sheets A203 do not comply
8 with 11-400.7(b). The setbacks shown are three feet four
9 inches and two feet zero inches respectively, but should be
10 at least eighteen feet six inches, the distance equal to the
11 height of the penthouse above the roof.

12 Also, so that was for the roof. Also in roof structures
13 under 411, under 411.3, again I don't have to repeat, you know
14 what the rules are. The proposed development shows rooftop
15 mechanical equipment located at two separate locations and
16 outside of the rooftop penthouse structure which is
17 non-compliant. That's it for the rooftops.

18 I'm going to the alleys. The alley measuring 18 feet
19 in width has no access from Varnum Street Northwest and must
20 be entered by 15th Street Northwest or Webster Street
21 Northwest. A poorly maintained service alley which freezes
22 on icy conditions, the parking area at 1521 Varnum Street was
23 not designed to be converted into a four car parking lot with
24 access to a building facing the alley.

25 DCRA does not address the issue with the alley being too

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1 small. They say the zoning regs don't address alleys which
2 is a non-response. I would point out the fact that there will
3 be 14 garbage cans, 14 recycling cans to be put out on trash
4 day, which in our neighborhood is one time a week and we have
5 big cans.

6 Right now, the plans show all the cans on the side yard,
7 but where are the 14, I'm sorry, 28 cans going to go? They
8 can't go behind the property because all of that space is taken
9 up by the parking spaces. They'll either be in the middle of
10 the alley blocking access, or blocking someone else's property
11 such as my own.

12 This is a perfect example of why R4 is not supposed to
13 be an apartment house district. The current parking for
14 residents is in compliance with the R4 residential district
15 of one car per back lot.

16 The resulting noise and increased opportunity for crime
17 is a neighboring concern. The properties at 1520, 1518, and
18 1516 Webster Street and 1519 Varnum Street would be directly
19 impacted by the noise by both people and vehicles, lack of
20 privacy, danger from speeding vehicles, possible property
21 damage from vehicles attempting to back in and out of the spaces
22 on the narrow alley, and street lighting.

23 While the design calls for one parking space for every
24 two units equaling four spaces in this case, to be sure there
25 are two bedroom units. So there's the very real possibility

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1 that there will be 14 cars for a house that's currently a single
2 family home on the block where parking is already limited.
3 Where are those cars going to be parked?

4 The building is not in compliance with other applicable
5 zoning requirements as mentioned, and it is therefore not in
6 keeping with the purpose of the applicable zoning district or
7 in the best interest of the neighborhood.

8 I'm not going to have to go in and repeat 101 which is
9 the interpretation application of the Title 11, of the regs.
10 But again, in A it does say that it's supposed to provide
11 adequate light and air and prevent undue concentration of
12 population and the overcrowding of land.

13 Also, in 101.2 the regulations in this title and the
14 zoning maps are designed with consideration of the character
15 of the respective districts, the suitability of each district
16 for the uses permitted in each district under this title and
17 encouragement of the stability of districts and land values
18 in those districts.

19 Also, there was supposed to be, DCRA also requires that
20 the plat is to be drawn by the Office of the Surveyor upon which
21 the new development footprint to be drawn by the
22 architect/civil engineer.

23 The plat submitted along with the project drawings was
24 created by the D.C. Surveyor, however it does not include the
25 new development information as required by DCRA. The plat as

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1 submitted is incomplete. The proposed development footprint
2 is non-compliant because it goes over the eastern lot boundary
3 line, as observed when coordinating the D.C. surveyor plat
4 submitted with the floor plan drawings on Sheets A201 and
5 Sheets A202.

6 The new partition wall, P3 that extends the existing
7 eastern party wall further north infringes on my property, 1519
8 Varnum Street for 5.625 inches along the ten foot four inch
9 length of the new partition wall, P3 wall type.

10 Also, in 412, pervious surface, I'm not going to read
11 that to you, you know what it is. The new work site plan
12 drawing on Sheet A001 does not identify the specific areas that
13 are grass, mulch, ground cover, permeable pavers, decks or
14 porches with dimensions and/or square foot areas included for
15 each.

16 This omission prevents verification of the pervious
17 surface calculations. The new work site plan drawing on Sheet
18 A001 needs to be revised to identify and delineate all pervious
19 and impervious surface materials with dimensions and/or square
20 foot areas for compliance with Section 412.

21 BZA CHAIR JORDAN: Did you cite 412 in your initial
22 application?

23 MR. STOKES: I'm not sure, sir.

24 BZA CHAIR JORDAN: I'm not either. Okay, let's proceed
25 on.

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1 MR. STOKES: And also, let me just state for the record
2 as well, as you say, I'm green to this. I'm stumbling here
3 a little bit, trying to do the best I can.

4 BZA CHAIR JORDAN: You're doing good.

5 MR. STOKES: I have been receiving information, and I
6 actually reached out to Mr. Sullivan and asked could I have
7 an extension because again, these guys have been down this road
8 for years. I'm coming into this, I'm three months into this.
9 I'm still receiving documents, I'm still --

10 BZA CHAIR JORDAN: Did you request an extension from the
11 Board?

12 MR. STOKES: I did not request one from the Board.

13 BZA CHAIR JORDAN: Those guys can't give you extension,
14 we can give you the extension. I'm hearing you. Are you
15 requesting an extension so you can fine tune what you're trying
16 to say to us?

17 MR. STOKES: I'm not too sure.

18 BZA CHAIR JORDAN: I think you are.

19 MR. STOKES: Yes.

20 BZA CHAIR JORDAN: I really think you are. And I think
21 everybody else -- look, I think this is very important. I think
22 we're hitting some issues that I think need to be refined.
23 I've been letting you talk now going on, it's right at 29
24 minutes and 53 seconds.

25 MR. STOKES: They said I had an hour in the thing.

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1 BZA CHAIR JORDAN: Yes. But you know the Chair
2 controls it, but it has to be relevant. Let me say this to
3 you because I also want to be fair to both the owner and fair
4 to DCRA which I always say, again Mr. Hood, that DCRA is not
5 the real party in interest, and I just think it's kind of a
6 waste of Government time and money to defend the developer's
7 aspect or property owner.

8 They're the real party in interest and we need to
9 probably look at that in the rewrite because they don't really
10 have a dog in the hunt. They shouldn't be defending the
11 property development or et cetera. But that's neither here
12 nor there. I understand what the law is and we've talked about
13 it. That's just editorial.

14 But I think they have to, we've cited some things that
15 are not necessarily here, and you've given some more specifics,
16 and they actually have to have the ability to be able to respond
17 to that specifically.

18 Otherwise, some of these things are new to them and how
19 they're going to have to drill in and try to get -- I've been
20 trying to keep track of everything that you've said. Some of
21 those things are and are not here. So let's do this, I'm going
22 to -- when is Mr. Hood with us again?

23 ZC CHAIR HOOD: I'll be back June the 23rd.

24 BZA CHAIR JORDAN: Okay.

25 ZC CHAIR HOOD: No, no, I won't be back June the 23rd,

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1 I'm going to have to switch. I just thought, I'm going to be
2 out of town.

3 BZA CHAIR JORDAN: Are you switching earlier?

4 ZC CHAIR HOOD: I'm actually, I'm going to ask Mr.
5 Chairman, if you're watching I'm going to ask you could I switch
6 with you because I have to go out of town on business.

7 BZA CHAIR JORDAN: Well that's okay, he can redirect.
8 (Simultaneous speaking)

9 ZC CHAIR HOOD: No, I'm going to stay on this case, Mr.
10 Chairman.

11 BZA CHAIR JORDAN: Okay.

12 ZC CHAIR HOOD: What I'm saying is I'm going to
13 respectfully request that the BZA move this to June the 23rd,
14 I'm sorry, June the 30th because I'm going to be out of town
15 the 23rd.

16 BZA CHAIR JORDAN: Yes, and I want to do this. Let me
17 give, June 30th, gentlemen, your schedules are okay June 30th?

18 ZC CHAIR HOOD: You know what, let me check my schedule.
19 Can I get two minutes?

20 BZA CHAIR JORDAN: Sure. Let's --

21 ZC CHAIR HOOD: Give me two minutes.

22 BZA CHAIR JORDAN: Oh, we've missed our 10:30 pit stop.
23 So we're going to take five minutes and come back, check your
24 schedules, please.

25 (Whereupon, the above-entitled matter went off the

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1 record at 10:42 a.m. and resumed at 10:47 a.m.)

2 BZA CHAIR JORDAN: We broke with people checking dates.
3 And June 30th would be the date, 23rd or 30th?

4 MR. MOY: We're doing June 30th.

5 BZA CHAIR JORDAN: Is that the date?

6 MR. MOY: For a continued hearing, sir, right?

7 ZC CHAIR HOOD: June 30th, I was able to switch with Mr.
8 Chairman. When it's in order, I do have a request.

9 BZA CHAIR JORDAN: Yes.

10 ZC CHAIR HOOD: I'm going to request that this case go
11 to the Zoning Commission. I'm not sure what the procedures
12 are.

13 BZA CHAIR JORDAN: I would agree with that.

14 ZC CHAIR HOOD: But I'm going to request that my
15 colleagues and I deal with this particular case in R4. So I'm
16 not sure what the legal requirements to get it there. But I
17 want it to come to the Zoning Commission.

18 BZA CHAIR JORDAN: Yes, well the Zoning Commission can
19 take sua sponte cases from BZA. But we can maintain this for
20 June 30th hearing date. But the issues here are something that
21 we're very, we're just the facts. We're straight down, we
22 don't have the leeway.

23 And the Zoning Commission I believe has been dealing
24 with these pop-up issues, and I think that's what you're
25 saying, Mr. Hood.

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1 ZC CHAIR HOOD: Yes, and the reason, let me just say
2 this, the reason I'm exercising 3128.1 is because there has
3 not been a decision made. I know I can exercise 3128.1. What
4 I want to do now is request before a decision is made that the
5 Zoning Commission particularly take this case.

6 BZA CHAIR JORDAN: Well, let's do this. We have June
7 30th as a date. Is there anybody that has a problem with June
8 30th, this being rolled over? Yes?

9 MR. WENG: Yes, I cannot do June 30th. I'm a witness.

10 BZA CHAIR JORDAN: You're a witness. You can submit
11 your testimony in writing. I'll tell you what, let me give
12 you three minutes to provide your testimony on this. Anybody
13 else that wants to give three minute testimony on this matter?
14 If you can't be here on June 30th, I'll give that deference
15 because people have come here. But for parties and those
16 people who have interest, they will be June 30th.

17 So I will do that to be fair to you. But June 30th,
18 parties?

19 MR. SULLIVAN: To the extent that it has to be delayed,
20 it is very damaging to my client and for a matter of right
21 project. And the only reason seems to be because he hasn't
22 found an error in the Zoning Administrator.

23 However, it seems like that ship has sailed. I would
24 only ask that there be a cutoff date for allegations. And so
25 that we can --

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1 BZA CHAIR JORDAN: I was going to give a briefing
2 schedule.

3 MR. SULLIVAN: To be very efficient.

4 BZA CHAIR JORDAN: I was going to give a briefing
5 schedule.

6 MR. SULLIVAN: Thank you.

7 BZA CHAIR JORDAN: That was the whole intent of the
8 other part of one giving more time. But certain things have
9 come out here that was not set forth in your appeal. And the
10 parties, we have to be, this Board has to be fair.

11 And so to have them try to shoot off the cuff to some
12 of the things that you're more specific about here today, it
13 just would not be fair. And besides, I think you need some
14 time to help shape up what you're talking about to be clear.

15 So I think that we would give a briefing schedule, but
16 we're going to come back and take any for or against kind of
17 testimony in a second here. But briefing schedule wise, we're
18 going June 30th, is that correct?

19 So Mr. Moy, let's work backwards. I need to get an
20 amended appeal from the Applicant, from the Appellant, excuse
21 me, with specific requests, a specific statement as to what
22 those violations are that you'll list the Zoning Administrator
23 violated, specific.

24 You know, honestly had I had a procedural request for
25 Motion to Dismiss, we probably would have dismissed. But no

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1 one did that in regards to this. In fact, they responded to
2 what they thought you were trying to say and now it's kind of
3 hairy also.

4 And now we know there's some moving targets. So the
5 Board has to have before it the proper parameters for it to
6 make a decision. So and then we need to have the response by
7 both the owner, we call intervener, but the real party in
8 interest and DCRA.

9 So they need time to respond, and then we will give the
10 Appellant time to file a reply. So let's, you should be able
11 to knock your part out within a week because you should just
12 go ahead and document where you are within a week to where your
13 allegations are. And then give the two other parties a week
14 to respond to that.

15 MR. STOKES: Is it possible to have a little longer than
16 --

17 BZA CHAIR JORDAN: Now you brought this dog to the hunt.

18 MR. STOKES: I defer to whatever you tell me. I just
19 want to make sure I have it right.

20 BZA CHAIR JORDAN: All right, we'll give you ten days,
21 and then seven, seven, three. Okay? Does that take us past
22 June 30th? I hope not because we should have it because the
23 Board has to read all this with our insomnia. So when do we
24 need it back, the final, all the documents have to be in for
25 us to get our package and all done by the 23rd, Mr. Moy, or

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1 the 22nd? Or what?

2 MR. MOY: I would make that Monday the 22nd, sir, as the
3 final.

4 BZA CHAIR JORDAN: Okay, so why don't you work backwards
5 from there.

6 MR. MOY: Okay, that would be 5/22. The other two days,
7 the response from parties would be, based on your time line,
8 Mr. Chairman, would be May 15th which is a Friday. And for the
9 --

10 BZA CHAIR JORDAN: No, no, no. No, no, no. May 15th
11 --

12 MR. MOY: Okay, I'm sorry, I'm sorry, I'm sorry.

13 BZA CHAIR JORDAN: Let's work backwards. So from the,
14 you needed it when? For the June 30th hearing you need to have
15 everything in your place by June 22nd, correct?

16 MR. MOY: Yes, sir.

17 BZA CHAIR JORDAN: So June 19th we need to have the reply
18 from, I'm using June 19th, I don't know if that's a Saturday
19 or Sunday, whatever.

20 MR. MOY: It's a Tuesday, that's good.

21 BZA CHAIR JORDAN: June 19th we need to have the reply
22 from the Appellant, okay? And then seven days before that we
23 need to have, no three days before that we need to have the
24 statement from, so that's the 16th, so July 16th? I mean June
25 16th? What day is that? June 16th, okay.

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1 MR. MOY: Chairperson?

2 BZA CHAIR JORDAN: Woah, woah, woah. June 16th, right,
3 we get the responses from the parties. And we need the brief
4 and so then ten days back off of that is what, that's June 10th.
5 That gives you even more time to work with it. Okay.

6 MR. MOY: June 10th --

7 MR. STOKES: And Chairperson, I also respectfully ask
8 that I, because again, I'm finding out that I should be having
9 plans that I don't have. I respectfully ask that I have all
10 updated construction documents --

11 BZA CHAIR JORDAN: Wait, wait, wait. Just to slow you
12 down just a little bit. Okay. First of all let me say this,
13 and you said this several times, and I know this is part of
14 the frustrations. But you have the ability to go down to DCRA
15 and get those documents. You have the ability to do that.

16 And so that's what it's there for. There's public
17 records, nobody can stop you from that. And I also keep saying
18 over and over again if you think something is going on in your
19 neighborhood, then you need to be also looking on the DCRA
20 website and be looking at the documents as those things come
21 across, things that are happening.

22 So a lot of stuff is there. So you can go down and get
23 those things and you have freedom to get the whole file, look
24 at what you need, all that. Okay? So that gives you, what's
25 the date that, so you have a little bit more time now. Looks

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1 like you're, what, June 10th or something to at least get your
2 documents in.

3 Now that being said, unless the Board has any problems,
4 that's the way we're going proceed. In the interim though,
5 it's my understanding the Zoning Commission is going to,
6 they're going to have a conversation about taking this case.
7 I don't know if they can or how that can happen, but
8 procedurally, that's for the Office of Attorney General to take
9 a look at how that might happen in regards to that because as
10 the Chair is indicating, they have a serious interest in this
11 matter.

12 Now let's go forward. How many people we have that
13 need, that want to provide testimony on this case. All right,
14 so that's it. So we'll give you three minutes to provide your
15 testimony to the Board, mister?

16 MR. WENG: Weng.

17 BZA CHAIR JORDAN: Weng.

18 MR. WENG: W-E-N-G.

19 BZA CHAIR JORDAN: Very good. All right, thank you.
20 Why don't we set the clock for three minutes?

21 MR. WENG: Excellent. Thank you very much. And I
22 appreciate that you're taking this matter so seriously because
23 it's really a principal matter that will be discussed and
24 decided by you.

25 And if this is truly a matter of right, or if it's not

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1 a matter of right and thereby this construction permit should
2 not have been provided. And I will argue very simply here that
3 there are two important facts that fly in the face of the
4 general provisions for the R4 district which is why I support
5 Mr. Stokes' appeal, and then I have a quick personal note.

6 BZA CHAIR JORDAN: Well, as long as you do it in two
7 minutes and 21 seconds, you can do whatever you want.

8 MR. WENG: There are two areas where I believe the
9 construction permits have been wrongly provided.

10 BZA CHAIR JORDAN: Now we're not dealing with
11 construction. We're dealing with zoning violations.

12 MR. WENG: So the zoning violations are specific in two
13 areas that we believe, I believe that the new home truly is
14 a new construction. And I believe this goes way far beyond
15 the general provisions in the R4 district code.

16 The primary one is that this purpose of the R4 is the
17 stabilization of remaining one family dwellings. And the R4
18 district shall not be an apartment house district. Okay, so
19 is the developer allowed as a matter of right to convert this
20 row house into a seven unit apartment building?

21 I don't care too much if it's six units or seven units,
22 but can you really add an additional building to an existing
23 structure and do this? And obviously you cannot because this
24 is not an empty lot that you build upon.

25 The existing structure and building can be converted and

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1 they can do a beautiful job, this should be welcome. But they
2 cannot add another building and have a seven unit apartment
3 building there. That flies right in the face of the code.

4 So that's the main thing, and you can ask into it. And
5 just a personal note. If these buildings that they are, they
6 will sort of rip apart, when you look at it it's a de facto
7 race. It's not a conversion. You cannot convert a row house
8 into a seven unit thing. I mean, I don't think any reasonable
9 person --

10 BZA CHAIR JORDAN: Stay around for the rest of the
11 docket.

12 MR. WENG: Yes.

13 BZA CHAIR JORDAN: Go ahead.

14 MR. WENG: And so we have two new homes on the block,
15 and there are four kids in my house. And when you go in and
16 make these changes to a building, there are two things that
17 are on buildings before 1958, right, asbestos and lead paint.
18 And you better be darn sure that the right permits are granted
19 when you go in and make a new construction and rip an existing
20 structure apart.

21 BZA CHAIR JORDAN: Is that it?

22 MR. WENG: Yes.

23 BZA CHAIR JORDAN: We've let you go a little bit longer.

24 MR. WENG: So let's sum up quickly that this is not a
25 matter of right. Very important, it's a new construction.

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1 It's not a conversion. It's so monumental in the structure
2 that it blows it apart. And because the general provision of
3 the R4 district is that it should not be an apartment building
4 district, that's the second part that flies in the face of that.

5 And then there's some serious, when you have a de facto
6 raise of an existing building, there are a lot of security
7 issues for the neighborhood that has to be taken into account.
8 Thank you.

9 BZA CHAIR JORDAN: Very good, thank you. All right,
10 appreciate it. We will continue this hearing to the 30th with
11 the order provided by the Board. We thank you all for taking
12 the time, and appreciate it. Thank you.

13 DCRA, Mr. LeGrant, stay tuned. Don't go anywhere.
14 We're going to pull up your next one. This is your day. I
15 feel like we just can't get things easy to come to this Board.

16 MR. MOY: All right, Mr. Chairman, I believe this would
17 be Appeal Application number 18965.

18 BZA CHAIR JORDAN: Yes.

19 MR. MOY: Of Peter and Diana Minshall?

20 BZA CHAIR JORDAN: Yes. I think, Mr. Sullivan, you
21 stay also don't you?

22 MR. MOY: Yes, this appeal was previously heard on April
23 14th, Mr. Chairman.

24 (Off microphone comments)

25 BZA CHAIR JORDAN: Okay. All right. Please identify

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1 yourselves, please.

2 MS. PRINCE: Allison Prince from Goulston & Storrs here
3 on behalf of the property owner.

4 MR. SULLIVAN: Marty Sullivan from the law firm of
5 Sullivan and Barros here on behalf of the Appellant.

6 (Off microphone comment)

7 BZA CHAIR JORDAN: Just make sure you're on a
8 microphone, please.

9 MR. MINSHALL: Peter Minshall, the Appellant.

10 MR. LeGRANT: Matt LeGrant, Zoning Administrator,
11 DCRA.

12 MR. TONDRO: Maximilian Tondro, DCRA Office of the
13 General Counsel.

14 BZA CHAIR JORDAN: All right. As we said the last time
15 this was set, there were at least two motions to dismiss on
16 this case alleging untimely filing. And we gave the Appellant
17 the opportunity to respond to those motions to dismiss. And
18 then the other parties, the owner, the real party in interest
19 and DCRA have responded.

20 So let me ask, I think this really breaks down to some
21 very narrow issues, especially in regards to the motion to
22 dismiss. I think there's been some dancing around this, and
23 I'm not speaking for the Board. I'm speaking from our own
24 situation.

25 Let me ask the Appellant, Mr. Sullivan or Mr. Mitchell,

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1 when was the retaining wall constructed?

2 MR. SULLIVAN: Some time in 2013.

3 BZA CHAIR JORDAN: And under what permit was that
4 constructed, to your knowledge?

5 MR. SULLIVAN: I don't believe it had a permit.

6 BZA CHAIR JORDAN: All right, let me ask the owner, when
7 was the wall constructed, the retaining wall?

8 MS. PRINCE: The wall was constructed in January of 2013
9 after notice to the owner pursuant to --

10 BZA CHAIR JORDAN: Wait, now you're running down the
11 street. Stay with me.

12 MS. PRINCE: Okay.

13 BZA CHAIR JORDAN: See, that's why I'm asking these
14 questions, because I think there's been so much lawyering going
15 on in these briefs that it's driven me crazy, and I'm a lawyer.
16 I've read them 50 times and it's so much puffing in here.

17 And that's why I want to do what I'm doing because I read
18 the stuff and I said wait a minute, what are they really saying?
19 It's been said all kind of different ways but not getting to
20 the point. So excuse me, just stay with me. So what permit
21 was that?

22 MS. PRINCE: It was pursuant to a building permit issued
23 on May 25th, 2012 in connection with the pool.

24 BZA CHAIR JORDAN: And that permit number, is that
25 permit number --

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1 MS. PRINCE: 1110228.

2 BZA CHAIR JORDAN: It's like four or five -- 1100 -- give
3 it to me again?

4 MS. PRINCE: There were actually two permits. There
5 was an original permit involving the entirety of the site which
6 was 1110228 dated March 23rd, 2012.

7 BZA CHAIR JORDAN: That's the one I'm familiar with,
8 okay.

9 MS. PRINCE: That permit also showed the wall.

10 BZA CHAIR JORDAN: And those drawings, do we have a copy
11 of those drawings? Is that before the Board?

12 MS. PRINCE: We have drawings.

13 BZA CHAIR JORDAN: Was that --

14 MS. PRINCE: We have the full set of drawings.

15 BZA CHAIR JORDAN: In the drawings of March 23rd, 2012,
16 was the retaining wall shown?

17 MS. PRINCE: Yes.

18 BZA CHAIR JORDAN: And what is the dimensions of the
19 retaining wall? On those March 23rd, 2012 drawings.

20 MS. PRINCE: I have the architect here who has a full
21 set of the drawings, but the retaining wall's less than four
22 feet.

23 BZA CHAIR JORDAN: Someone wants to point me to it in
24 the record? See, let me tell you why I think this breaks down.
25 It breaks down to the question of, and this is just be, Board,

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1 when was the retaining wall actually established and what
2 happened in November, pursuant to permit of November 11,
3 November 26, whatever it is, 2014?

4 Was that wall constructed at that point? If it's
5 constructed before that point, pursuant to any other permit
6 or decision of the Zoning Administrator, then the date's go.
7 If there was a construction of a retaining wall based upon the
8 permit of November twenty whatever that date is, 26, 2014, then
9 we have a hearing that we have to have.

10 So that's kind of what I'm asking. And I don't, I've
11 looked for these documents and I just, can you give it to us
12 what was --

13 MS. PRINCE: The wall was fully constructed in January
14 of 2013. The only item that was not including -- the retaining
15 wall. The only item that was not completed at that time was
16 the finish of the wall --

17 BZA CHAIR JORDAN: The stucco.

18 MS. PRINCE: -- on the Appellant's side. Correct.

19 BZA CHAIR JORDAN: But that was referenced in emails in
20 2012 --

21 MS. PRINCE: Yes, it was --

22 BZA CHAIR JORDAN: Ms. Prince, you've been here many,
23 many times. You know how we go. You say something, I may say
24 something. But we don't say it at the same time, right? Okay,
25 thank you.

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1 So there are emails in the file in the record that are
2 exhibits that shows there's been correspondence about adding
3 the stucco finishing. This is a 2012 email that went between
4 the owner and the Appellant and trying to get buy-in and all
5 of that stuff.

6 So I need to see what was given on permit 1100028, is
7 that the correct number? Does that make sense to the Board?
8 Okay. It's probably one step extra, but I would like to
9 establish when it was done. So what was, do we have that?

10 MS. PRINCE: We have a full set of the drawings with us
11 here today.

12 BZA CHAIR JORDAN: Okay. My real basic question, what
13 was submitted for permit 1100028 showing the retaining wall
14 and its dimensions? For March 23rd, 2012. Yes, Mr. Tondro,
15 could you?

16 MR. TONDRO: I mean, just a point of clarification, I
17 believe that the permit number, and maybe I'm wrong, is
18 B1110228.

19 BZA CHAIR JORDAN: 1110 --

20 MR. TONDRO: Which I --

21 BZA CHAIR JORDAN: Oh, what did I say, 11 --

22 MR. TONDRO: I'm not sure what you said, but --

23 (Simultaneous speaking)

24 BZA CHAIR JORDAN: Just give it to me again, okay. I'm
25 sorry.

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1 MR. TONDRO: I believe B1110228 which was issued March
2 --

3 BZA CHAIR JORDAN: 0228?

4 MR. TONDRO: Yes. March 23rd, 2012.

5 BZA CHAIR JORDAN: Okay. And that's the one, Ms.
6 Prince, that you say the construction of the wall occurred,
7 correct?

8 MS. PRINCE: Correct.

9 BZA CHAIR JORDAN: All right, and do you have that? What
10 were the dimensions there? What was submitted on --

11 MS. PRINCE: It is, yes. Yes, we have the building
12 permit plans. There's a reference to the retaining wall, to
13 the wall on the pool permit that was issued in May.

14 BZA CHAIR JORDAN: And what was that, what was the date
15 of that?

16 MS. PRINCE: May 25th, 2012.

17 BZA CHAIR JORDAN: Okay, and that was the, okay. So
18 what permit was that?

19 MS. PRINCE: What's the permit number.

20 MR. TONDRO: It's SP1200001. One, two, four zeros, and
21 then a one.

22 BZA CHAIR JORDAN: And that shows the retaining wall?

23 MS. PRINCE: It depicts a wall on the property line,
24 correct, the wall that was built. It doesn't break out the
25 retaining wall separately. It refers to the --

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1 BZA CHAIR JORDAN: It's the retaining wall, it shows the
2 wall that is up to four feet in height?

3 MS. PRINCE: It shows the entirety of retaining wall
4 with wall on top of it.

5 BZA CHAIR JORDAN: So the retaining wall and the
6 fencing?

7 MS. PRINCE: Correct.

8 BZA CHAIR JORDAN: Is that what you call it? When you
9 say wall, wall. I'm kind of separating mentally, I may be
10 wrong, that it's retaining wall and fencing.

11 MS. PRINCE: Correct.

12 BZA CHAIR JORDAN: Okay. And so from that permit, the
13 retaining wall and the fencing was put in place, is that what
14 I'm understanding?

15 MS. PRINCE: Correct.

16 BZA CHAIR JORDAN: Okay. And the dimensions of that
17 wall, the retaining wall and the fencing together was?

18 MS. PRINCE: It varies in height, but the total -- the
19 fence part of the wall is five feet eight inches. And then
20 where is the height of the retaining wall? Okay.

21 BZA CHAIR JORDAN: What's 5.8?

22 MS. PRINCE: The fence above the wall.

23 BZA CHAIR JORDAN: It's five feet eight?

24 MS. PRINCE: The fence above the wall, five feet eight
25 inches. And we're getting out the dimension.

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1 BZA CHAIR JORDAN: What's the overall height of that,
2 yes?

3 MS. PRINCE: Seven feet eleven inches.

4 BZA CHAIR JORDAN: Seven feet eleven inches. So we
5 have --

6 MS. PRINCE: From the neighbor's side.

7 BZA CHAIR JORDAN: So we have about a two foot retaining
8 wall?

9 MS. PRINCE: Correct.

10 BZA CHAIR JORDAN: What's the height of the retaining
11 wall today?

12 MS. PRINCE: Approximately two feet.

13 BZA CHAIR JORDAN: Okay. Now let's do this. So the
14 retaining wall has not changed its height?

15 MS. PRINCE: Correct.

16 BZA CHAIR JORDAN: All right. Now let me turn back to
17 the Appellant. Do you have anything contrary that this
18 retaining wall was not built in January. No, wait, wait, wait.
19 Let's Mr. Sullivan, want you to be sure.

20 MR. SULLIVAN: First, it would be helpful to show the
21 wall because since it's built, we have the benefit of having
22 --

23 (Simultaneous speaking)

24 BZA CHAIR JORDAN: How tall is it, yes. How tall is it?

25 MR. SULLIVAN: From this side, from our side it's ten

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1 and a half feet high.

2 BZA CHAIR JORDAN: From your side it's ten and a half
3 feet. What is it from the owner's side?

4 MR. SULLIVAN: Well, from the natural grade --

5 BZA CHAIR JORDAN: You can just point that to the record
6 because I think we have that in the record.

7 MR. SULLIVAN: Yes.

8 BZA CHAIR JORDAN: Which Exhibit is that in the record,
9 Mr. Sullivan, so that we can -- Mr. Sullivan, I need to know
10 where in the record, the exhibit number so we can keep a proper
11 record.

12 MR. SULLIVAN: Okay, I'll get that for you. I don't
13 know it offhand.

14 MR. MINSHALL: This wall, from the ground to the top is
15 ten and a half feet tall.

16 (Simultaneous speaking)

17 BZA CHAIR JORDAN: Okay, who's side is this? This is
18 your side?

19 MR. MINSHALL: My side, this is our side.

20 BZA CHAIR JORDAN: Okay. What is it on the other side?
21 Is it level grade on the other side equal to this?

22 MR. SULLIVAN: The natural grade is only a little bit
23 higher if that. They've manipulated the grade and built up.
24 But under the retaining wall regs, that's not where you measure
25 from for measuring retaining wall height.

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1 BZA CHAIR JORDAN: All right, guys, guys. All right,
2 so all right. Now while you're doing that, you can put that
3 down, I'm good. Now let me ask you, what construction, what
4 construction, what construction or additions added to the
5 retaining wall from a creation standpoint, not any finishing
6 to the retaining wall but was the retaining wall constructed,
7 was there a construction to the retaining wall, and I'm
8 speaking to you the Appellant, based upon permit number 1410905
9 issued November 26, 2014?

10 MR. SULLIVAN: Our position is that --

11 BZA CHAIR JORDAN: No, come on, let's be direct.

12 MR. SULLIVAN: That permit is a de novo permit. I mean,
13 it's in response to the question.

14 BZA CHAIR JORDAN: So my question is did they add new
15 wall? Did they raise the height on November 26th, 2014 to the
16 retaining wall?

17 MR. MINSHALL: No, the height of the wall, the wall as
18 you saw it constructed has been there since day one. They built
19 it just like that.

20 BZA CHAIR JORDAN: All right. And what's your
21 contention about the November 26, 2014 because I think we just
22 solved this issue.

23 MR. SULLIVAN: The permit was a de novo permit. It was
24 approving construction of the wall after the fact. Just
25 because the wall was constructed doesn't mean it was

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1 constructed legitimately.

2 And the just having an email that references a finish
3 to a wall does not make the permit. Just a reference to a wall
4 or a depiction of a wall does not make a permit. In our brief
5 --

6 BZA CHAIR JORDAN: I've seen plenty of plans prior to
7 this date that both parties submitted.

8 MR. SULLIVAN: There's some important things. First
9 of all, there was a zoning review --

10 BZA CHAIR JORDAN: Okay.

11 MR. SULLIVAN: -- for this permit and for the 2014
12 permit. Why was there a zoning review of stucco? Why would
13 they review that if was just stucco. Secondly, there was a
14 structural review. Why would structural review, the 2014
15 permit? And I have, that's in the record but I also have copies
16 of the PIVS reports showing that if you want us to get that
17 out.

18 BZA CHAIR JORDAN: But doesn't that same permit that
19 you're appealing, and I'm not trying to argue your case, I'm
20 just trying to get to the gist of this because I think we've
21 been dancing around it, Board. The building permit B1410905
22 states, among other things, well new wood slack fence per
23 drawing, lower existing fence. Construction concrete wall
24 with stucco and stone and veneer. In parentheses, adding the
25 stucco/facing to exterior of an already constructed wall.

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1 MR. SULLIVAN: That's the description we have, yes.

2 BZA CHAIR JORDAN: And you're telling me here there was
3 no new construction based upon this permit. That's what I'm
4 asking. You're argument is that it's really trying to
5 validate something that was already put up that you believe
6 had not received the proper authority?

7 MR. SULLIVAN: That's correct.

8 BZA CHAIR JORDAN: And you're saying this gave them the
9 authority to construct a wall. This permit I just read?

10 MR. SULLIVAN: Yes. And what I base that on is first
11 of all, OGB's effusive comments that they had never seen this
12 before and it was de novo. The fact that it's reviewed by
13 zoning, reviewed by structural.

14 The fact that, and you have this in the record, I can
15 pass it out again, but Tim Dennee letter submitting this to
16 the OGB said specifically it is not clear which walls were
17 intended by the five foot exterior stone walls as the elevation
18 drawings within the set indicate that the pool and some
19 associated walls would be submitted under a separate permit
20 application.

21 He was confused by this. And then he also notes that
22 the height of the actual wall was considerably different than
23 what they're claiming was submitted in their permit.

24 And it's ironic that they've mentioned the Baskin case
25 because what I think the Baskin case stands for is that when

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1 there is a permit process that's confusing, now this is a permit
2 process that was defective, it's beyond confusing, then a
3 decision hasn't been made until it's clarified because in
4 Baskin, you had a permit issued in November of one year and
5 then six or eight months later there was a clarification letter
6 from DCRA and that was the starting point for the 60 day appeal
7 period in that case.

8 So what that stands for is that until it's clarified.
9 Now we have a situation like that here, except it's more than
10 confusion, it's defective. It doesn't represent the wall that
11 was built, OGB clearly didn't see it. And clearly, the way they
12 reviewed it, it wasn't just for stucco, notwithstanding that
13 the Applicant wrote that description on their permit
14 application and that's what DCRA then related to that permit.

15 So under that standard of the Baskin standard, the 60
16 day, there was no clarification, there was no legitimate permit
17 until November 26, 2014, and the appeal was filed within 60
18 days after that. That's our position.

19 BZA CHAIR JORDAN: I think does the Board need to hear
20 any other testimony on this because I think, unless the parties
21 think they need to cross examine or have cross examining
22 statements, because I think what I would offer to the Board
23 that we would two things, that we would grant the motion to
24 dismiss based upon an untimely filing.

25 There was no construction, there was no decision by the

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1 Zoning Administrator which was violated regarding, that's been
2 presented to the Board that the retaining wall of the wall that
3 has been presented was done prior to November, whatever the
4 date is, November 26, 2014, and prior to permit number 1410905
5 being issued.

6 Further, by the testimony presented that the Appellant
7 indicated there was no new construction to that wall, but
8 simply this is an attempt to validate something that has been
9 previously done.

10 There has been testimony presented to the Board that the
11 retaining wall, or that lower portion of the wall was built
12 in January 2013 by virtue of permit SP120001 which shows on
13 the plans a wall, and further followed up by permit 110228 of
14 March 23rd, 2013 with clearly that the wall has been in place
15 and that those permits, if anything, provided for the
16 direction, decision of the Zoning Administrator which would
17 have been the applicable time to file any appeal.

18 Certainly when you saw the wall going up early on back
19 in 2013 even to raise that specter, there was also the record
20 indicates that --

21 MR. SULLIVAN: Mr. Chairman --

22 BZA CHAIR JORDAN: I'm still talking, Mr. Sullivan. No,
23 if what you got to say is important, go ahead.

24 MR. SULLIVAN: When you're finished, I would like Mr.
25 Minshall to submit some testimony on what --

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1 BZA CHAIR JORDAN: I've already asked was there
2 anything else in addition.

3 MR. SULLIVAN: -- he responded to when he found out
4 about the wall.

5 MR. MINSHALL: I do have additional testimony.

6 BZA CHAIR JORDAN: Well I already asked you before I
7 went over to the other parties if they had anything they wanted
8 to add to this. So anyway, so let me finish. Now you made
9 me lose my train of thought.

10 And that there was correspondence in the record that
11 indicated between the parties and discussion about the added
12 stucco which is what appears. The permit number B1410905 says
13 adding to an existing, already, exterior wall. There's been
14 nothing to the contrary to that.

15 So both on issuing the motion to dismiss, granting the
16 motion to dismiss, I believe also summary based upon, well not
17 even summary, we've had some testimony regarding the issue of
18 what is the matter being appealed on from the Zoning
19 Administrator that there is nothing showing that the Zoning
20 Administrator provided for a retaining wall in permit number
21 1410905. I'm going to give you an opportunity to give a brief
22 whatever you want to say about that before I move this on to
23 the board.

24 MR. MINSHALL: Yes, thank you very much. Whatever was
25 supposedly permitted was not built. Why is someone allowed

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1 to build something that's not permitted? So the actual
2 construction was not permitted.

3 There was something entirely different on their permit
4 than what they constructed, entirely different. Now they're
5 saying because we built it, we have a permit for it. When I
6 was notified that this wall was to be built, I did not give
7 my agreement. I expressed my concern about the height and the
8 appearance --

9 BZA CHAIR JORDAN: And that was back in 2012, 2012?

10 MR. MINSHALL: I was told that they had, they were going
11 to build this. I assumed they had all the valid permits, all
12 the approvals from OGB. I live in Georgetown. They did not
13 have any approval from OGB to build this wall. In Georgetown,
14 you are not allowed to do any construction without an approval
15 from OGB.

16 BZA CHAIR JORDAN: So when you saw the wall go up at that
17 point, what did you do?

18 MR. MINSHALL: We went to Historical Preservation, we
19 went to OGB --

20 BZA CHAIR JORDAN: Did you file a complaint with DCRA
21 and the Zoning Administrator so that they can cite it?

22 MR. MINSHALL: We did.

23 BZA CHAIR JORDAN: And what happened then?

24 MR. MINSHALL: We had a stop order.

25 BZA CHAIR JORDAN: And then what happened?

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1 MR. MINSHALL: And then the stop order was lifted.

2 BZA CHAIR JORDAN: What year was that?

3 MR. SULLIVAN: 2013 I believe.

4 BZA CHAIR JORDAN: Did you come to this body, did you
5 file an appeal upon the decision of the Zoning Administrator
6 for 2013?

7 MR. MINSHALL: No, we went to OGB --

8 BZA CHAIR JORDAN: No, I'm asking, did you file an
9 appeal of the Zoning Administrator's decision in 2013 based
10 upon what you just told me?

11 MR. MINSHALL: We did not because we never thought there
12 was a permit for the construction of the wall. So we didn't
13 feel there was anything to object to at that time. So the
14 permit that we're objecting to is the first permit that had
15 specifically identifies this wall as it is constructed.

16 There was nothing to appeal, nothing to come to you for
17 after it was constructed. So we did the best we could as
18 citizens to go through the appropriate channels, which is what
19 we did. OGB said you need a brand new --

20 BZA CHAIR JORDAN: Appropriate channels by the
21 regulation if there is a question about the zoning, about the
22 retaining wall is a zoning regulation or about any structure
23 in the rear yard is a zoning regulation.

24 And the decision, when you asked the DCRA and the Zoning
25 Administrator to put a stop work order, they put a stop work

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1 order, it was removed. And whether you agreed or disagreed
2 with it back then would be to have filed an appeal to this body
3 as you did with this one.

4 So I think is there anything else you need to say because
5 I hear where you are and I understand --

6 MR. SULLIVAN: Mr. Chairman?

7 BZA CHAIR JORDAN: Yes?

8 MR. SULLIVAN: And I would just add that his method was
9 validated when DCRA agreed and said you're right, it doesn't
10 have a permit, it must get one.

11 BZA CHAIR JORDAN: And then DCRA pulled the stop work
12 order off, correct?

13 MR. SULLIVAN: That was before that, the stop work order
14 was before that. But in the end, the result was that the DCRA
15 and OGB agreed with his tactic of trying to find out whether
16 or not a permit was issued. And if there was a permit issued,
17 why did they send it back and say you need a permit?

18 BZA CHAIR JORDAN: Is there anything else? Is there
19 any other party? The real party in interest and DCRA, is there
20 anything you need to add?

21 MS. PRINCE: I would like to clarify a few matters,
22 unless the Board has --

23 (Simultaneous speaking)

24 BZA CHAIR JORDAN: -- clarify?

25 MS. PRINCE: I would like to clarify.

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1 BZA CHAIR JORDAN: Okay.

2 MS. PRINCE: As we know, this is a textbook case of
3 sitting on one's rights. With respect to the stop work order
4 in which, although it was instigated by the Appellant, the
5 Appellant did not attend the hearing, and the stop work order
6 was removed from the property.

7 And the two permits that we've referred to throughout
8 this hearing, the two 2012 permits have never been revoked.
9 They were posted on the property throughout construction, and
10 they have never been revoked. That's all I wanted to clarify.

11 BZA CHAIR JORDAN: All right, well because that
12 statement, although I just hate the fact that we try to do cross
13 examination of lawyers because now it's a whole different issue
14 without witnesses.

15 Mr. Sullivan, any questions you want to ask based upon
16 what she said, questions you want to ask Ms. Prince?

17 MR. SULLIVAN: No, Mr. Chairman.

18 BZA CHAIR JORDAN: DCRA, any questions of Ms. Prince?
19 Any cross? Anything else you think you need to add to this
20 record?

21 MR. TONDRO: Yes, if I may, one brief comment.

22 BZA CHAIR JORDAN: Oh, you do? Okay.

23 MR. TONDRO: Just in response to the issue of OGB, I
24 would just point out, as I've already stated in the brief, the
25 OGB itself cited that the permit that they were reviewing was

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1 a fence that was at most six feet ten and a half inches tall.
2 That just does not correspond, therefore, to the retaining wall
3 which is at the bottom. Thank you.

4 BZA CHAIR JORDAN: Okay. All right. Then anything
5 else? Anyone cross? Mr. Sullivan, no cross?

6 MR. SULLIVAN: No, thanks.

7 BZA CHAIR JORDAN: Ms. Prince, any cross? Any cross
8 statement? All right, with this then we will close the record
9 on this case. Is the Board ready to deliberate because I know
10 I am? Sure.

11 Then I would, for the reasons I indicated prior to giving
12 the Appellant the additional rebuttal, I would move that we
13 grant the motion to dismiss and also issue an order in the
14 alternative that there was a failure to show that the Zoning
15 Administrator at issue found any error, that we found any error
16 in the Zoning Administrative decision regarding building
17 permit 1410905. That would be my motion. No second?

18 VICE CHAIRPERSON HEATH: I'll second.

19 BZA CHAIR JORDAN: Okay, motion made and second.
20 Additional discussion?

21 ZC CHAIR HOOD: Yes. Did we deal with the issue about
22 untimely, or was that a factor?

23 BZA CHAIR JORDAN: That was also.

24 ZC CHAIR HOOD: Okay.

25 BZA CHAIR JORDAN: Yes.

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1 ZC CHAIR HOOD: Okay.

2 BZA CHAIR JORDAN: All those in favor of the motion,
3 aye?

4 (Chorus of ayes)

5 BZA CHAIR JORDAN: Those opposed, nay.

6 (No response)

7 BZA CHAIR JORDAN: The motion carries. Mr. Moy?

8 MR. MOY: Yes, sir. Staff would record the vote as four
9 to zero. This is on the motion of Chairman Jordan to grant
10 the motion to dismiss on untimeliness. Second the motion,
11 Vice Chair Heath. Also in support Mr. Hood and Mr. Hinkle.
12 We have a Board seat vacant. Your motion carries, Mr.
13 Chairman.

14 BZA CHAIR JORDAN: So I would like to have a proposed
15 findings of fact and conclusions submitted by the owner, the
16 intervener, please.

17 MS. PRINCE: Yes.

18 BZA CHAIR JORDAN: Thank you very much.

19 (Off microphone comment)

20 BZA CHAIR JORDAN: We did vote. We said aye, didn't we?
21 We voted, didn't we? Yes. It was on the calendar. I said
22 we would grant the motion to dismiss and any alternative. Yes.

23 MS. PRINCE: The date for findings of fact and
24 conclusions of law?

25 BZA CHAIR JORDAN: As soon as you can get it in, but no

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1 longer, you know, come on. We can sit on orders all day. It's
2 up to you what you do.

3 MS. PRINCE: Thank you.

4 BZA CHAIR JORDAN: And it doesn't mean, as you know,
5 we're adopting directly but it helps move these things along.
6 Okay? All right, where are we now? So we've done all these,
7 right? And we did this and we did this one.

8 (Pause)

9 BZA CHAIR JORDAN: Mr. Moy, would you call 93 please?

10 MR. MOY: Yes, sir. All right, the next case to the
11 table, parties, Application number 18993 of Colleen Reilly and
12 Gary Addie. Mr. Chairman, this is a request for a special
13 exception relief under Section 223 at property 2412 Chain
14 Bridge Road Northwest, Square 1413 Lot 809.

15 BZA CHAIR JORDAN: Okay. Relief 223 should be added,
16 all right. Please identify yourselves. Just make sure your
17 microphone is on, please.

18 MS. REILLY: Good morning, Members of the Board. My name
19 is Colleen Reilly, and I'm here with my husband Gary Addie.
20 And we live at 2412 Chain Bridge Road.

21 MS. KURLAS: And I am Larysa Kurlas, I am the owner's
22 architect.

23 BZA CHAIR JORDAN: All right. I think procedurally we
24 -- I think Office of Planning has indicated that, are we doing
25 yard expansion here, that you may need additional relief from

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1 2001.3. Let me see, what are we seeking?

2 (Off microphone comment)

3 BZA CHAIR JORDAN: Because we're enlarging it, so that
4 you need additional relief. We can just take your oral
5 amending to that and then you can just simply do file an
6 amendment with the Office of Zoning as we go through this.

7 Where's the letter in opposition? There's a letter of
8 opposition. What was the substance, I'm trying to remember
9 what it was. I read it, but I'm, a light and air issue.

10 MS. REILLY: If I may, there is, there was one letter
11 of opposition and the woman who wrote the letter of opposition
12 has also sent a letter in today, just this morning.

13 BZA CHAIR JORDAN: Do you have a copy of it? Removing
14 it?

15 MS. REILLY: She sent it to me on my, I have it on my,
16 unfortunately, cell phone. But she also uploaded it. So it
17 is part of the record. We were trying to make copies of it.

18 BZA CHAIR JORDAN: Okay, just one second, please.

19 (Off microphone comment)

20 MR. MOY: Is the woman's name, I'm sorry, Mr. Chairman,
21 Tanya Taddage?

22 BZA CHAIR JORDAN: Okay, is she removing her
23 opposition?

24 MS. REILLY: She is apparently removing her opposition.
25 And she's also made a statement in there about a second floor

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1 addition which is really not part of our situation here. So
2 she is at once --

3 BZA CHAIR JORDAN: Just give me a second.

4 MS. REILLY: Okay.

5 BZA CHAIR JORDAN: I'll just read it. I can't say she's
6 removing any opposition. She's just kind of altering some
7 other things. But that's neither here nor there. All right,
8 so let's go forward. She's just clarifying her opposition
9 even though she says she'll agree to something, but she's got
10 some conditions there. So anyway.

11 This is 223, right? Give me a second. All right. But
12 for, as we see how things proceed here, this is a 223. There
13 hasn't been any other showing of any impacts. I think based
14 upon the face of your document submitted and the documents in
15 support thereof, that we can proceed on the hearing.

16 Certainly you can come back to any rebuttal that may come
17 up if there is some opposition, further opposition. But we do
18 have recommendations from Office of Planning that we support
19 this as well as the ANC.

20 I don't know if there's anything else that you think you
21 need to say to us, but I don't know if the Board needs to hear
22 anything at this point.

23 MS. REILLY: I don't think so.

24 BZA CHAIR JORDAN: Okay. So then we'll proceed on. If
25 there's something that comes up, we will certainly have you

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1 respond to it. Going to the Office of Planning.

2 MS. RAPPOLT: Good morning, Megan Rappolt for the
3 record, and we continue to stand on the record in support of
4 the request.

5 BZA CHAIR JORDAN: Okay. And did you actually go out
6 to the property?

7 MS. RAPPOLT: I did.

8 BZA CHAIR JORDAN: And you don't see any issues where
9 there could be any challenge of light and air?

10 MS. RAPPOLT: Light and air would not seem to be a
11 problem. There's several large deciduous trees along the back
12 property fence that I imagine shade the neighbors, both sides
13 of the neighbors' fence, actually. And there's privacy fences
14 that are --

15 BZA CHAIR JORDAN: Six feet?

16 MS. RAPPOLT: -- six feet plus, an additional two feet
17 of the trellis area. So it actually seems pretty walled off.

18 BZA CHAIR JORDAN: Okay. Board, any questions of
19 Office of Planning? Does the Applicant have any questions of
20 Office of Planning?

21 MS. REILLY: I don't, no.

22 BZA CHAIR JORDAN: Thank you, appreciate it. Anyone
23 here from Department of Transportation on this case? We do
24 have a letter of no objection from the Department of
25 Transportation. Anyone here from ANC3D? ANC3, yes? Please

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1 come forward. Good morning.

2 MS. GATES: Good morning, Mr. Chairman. I'm Alma
3 Gates. I had not planned to testify. Our letter is on the
4 file in support.

5 BZA CHAIR JORDAN: Thank you very much. And we have a
6 letter of support from ANC3D which we'll give great weight to
7 support your application. Is there anyone here wishing to
8 speak in support of this application? Anyone in support?
9 Anyone in opposition? Anyone in opposition?

10 We do have a letter as we just read, we went through it
11 again. There is a neighbor who amended initial opposition but
12 still is in opposition, has some other guidelines and criteria.
13 But her concern was certainly about privacy.

14 And I have nothing to really put basis on that. There's
15 a privacy issue and we will certainly give credit onto the
16 Office of Planning in this review of the property site,
17 indicated privacy is, in her opinion, is not at question.

18 MS. GATES: Mr. Chairman?

19 BZA CHAIR JORDAN: Yes.

20 MS. GATES: With all due respect, the party in
21 opposition had every opportunity to come to the ANC or to file
22 a complaint with us in writing. None came forward. It's
23 unfortunate to come to the table today and find this out.

24 BZA CHAIR JORDAN: I thank you for that. That's why we
25 always say that we ask neighbors and people to talk. And it's

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1 just, especially when you're going to end up being neighbors,
2 right? So got to live together. So anyone else in
3 opposition? Anyone in opposition?

4 Then we would close the record based upon what we already
5 have before the Board. Is the Board ready to deliberate?
6 Then I would move that we grant the relief requested in 18993.

7 MR. HOOD: Second.

8 BZA CHAIR JORDAN: Motion made and second. Further
9 discussion? All those in favor, aye?

10 (Chorus of ayes)

11 BZA CHAIR JORDAN: Those opposed, nay.

12 (No response)

13 BZA CHAIR JORDAN: The motion carries. Mr. Moy?

14 MR. MOY: Staff would record the vote as four to zero.
15 This is on the motion of Chairman Jordan to approve the
16 application for the special exception relief requested
17 including the amendment to add 2001.3.

18 Second the motion, Mr. Hood, also in support Vice
19 Chairperson Heath and Mr. Hinkle. Board seat vacant. Motion
20 carries, sir.

21 BZA CHAIR JORDAN: Very good. Summary order, please?

22 MR. MOY: Thank you.

23 BZA CHAIR JORDAN: Thank you.

24 MS. GATES: Thank you.

25 MS. REILLY: Thank you, Mr. Chairman. Thank you, Board

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1 members.

2 BZA CHAIR JORDAN: 94, please.

3 MR. MOY: I would direct to the table parties to
4 Application number 18994.

5 BZA CHAIR JORDAN: Yes.

6 MR. MOY: This, Mr. Chairman, is the request for
7 variance relief on the off-street parking requirements at 254
8 15th Street Southeast, Square 1073 Lot 22.

9 BZA CHAIR JORDAN: Okay.

10 (Off microphone comments)

11 BZA CHAIR JORDAN: Okay. Would you please identify
12 yourselves, please?

13 MR. SULLIVAN: Good morning, Mr. Chairman. My name is
14 Marty Sullivan here on behalf of the Applicant.

15 BZA CHAIR JORDAN: Okay, and?

16 MR. MEHDIZADEH: Hi, my name is Rahmin Mehdizadeh. I'm
17 the owner of the property.

18 BZA CHAIR JORDAN: Your last name again?

19 MR. MEHDIZADEH: Mehdizadeh.

20 BZA CHAIR JORDAN: Medizadea?

21 MR. MEHDIZADEH: Mehdizadeh.

22 BZA CHAIR JORDAN: Okay. All right. Yes, I work with
23 pronunciations. Yes. Make sure you use your microphone,
24 please.

25 MR. LEWIS: Yes, good morning, Mr. Chairman. My name

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1 is Keith Lewis. I am the next door neighbor.

2 BZA CHAIR JORDAN: Okay, next?

3 MS. LEWIS: Good morning.

4 BZA CHAIR JORDAN: Make sure to use a microphone.

5 MS. LEWIS: Good morning, I am Lisa Lewis, a neighbor,
6 as well.

7 MS. GLOVER: Lawane Glover, also a neighbor.

8 BZA CHAIR JORDAN: Okay. And I take it you're here in
9 opposition or support. Why are you here?

10 MS. GLOVER: Opposition.

11 BZA CHAIR JORDAN: Okay. Didn't we have a letter from
12 --

13 (Off microphone comment)

14 BZA CHAIR JORDAN: Yes. Make sure to use your
15 microphone, please.

16 (Off microphone comment)

17 BZA CHAIR JORDAN: Push it. Push it. Yes. Real
18 quick push.

19 MR. KAUFER: Yes, okay. Yes. Larry Kaufer, 246, a
20 couple doors away from the property.

21 BZA CHAIR JORDAN: Mr. Copper?

22 MR. KAUFER: Larry Kaufer, K-A-U, F as in Frank, E-R.

23 BZA CHAIR JORDAN: I make sure everybody's turn in their
24 witness cards, right?

25 FEMALE PARTICIPANT: Yes.

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1 BZA CHAIR JORDAN: Okay. And everybody has been sworn,
2 right, right, right? Okay. All right, here. I wanted to
3 take this a little bit out of whack. Because I believe there's
4 sufficient information in this record, Mr. Sullivan, I'm going
5 to deviate from our normal process.

6 So let me hear from those in opposition first and then
7 you can come back and just talk about that.

8 MR. SULLIVAN: Okay, thank you.

9 BZA CHAIR JORDAN: Is that good with you, Board? Let's
10 start with Mr. Lewis.

11 MR. LEWIS: Yes. I own the property at 250 15th Street
12 Southeast. And actually I have both the, two lots. The one
13 lot the house sits on, the other lot is a driveway. And then
14 there's the 254 where the construction is proposed.

15 BZA CHAIR JORDAN: So what's your address, 250?

16 MR. LEWIS: 250.

17 BZA CHAIR JORDAN: Okay.

18 MR. LEWIS: And there's a lot in between my house and
19 where the construction is being proposed. We've had a
20 longstanding issue with parking in the neighborhood. I was
21 actually born and raised in the neighborhood in the same house.

22 And for years, we only had one apartment building on that
23 block. Within the last ten years, there have been an
24 additional three apartment buildings. So parking has really
25 gotten crazy there.

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1 What's unique in my situation is we do have off street
2 parking at my house. But the problem is we always have a
3 problem with people blocking our driveway.

4 And there's an apartment building directly across the
5 street from us and that's where most of the problem comes from,
6 that apartment building with people, visitors coming to visit
7 the people in apartment or whatever will block the driveway.
8 And I can't tell you the numerous times I've been late for
9 appointments or work because for that issue.

10 The other issue is we get an abundance of sun on that
11 side of the house. And during the winter time, the guest room,
12 my wife and I sometimes sleep in there because that's the
13 warmest room in the house because of the sun and the windows
14 in there.

15 So I'm afraid that any elevation from 254 is going to
16 block that sun, as well as we have a picture window in our dining
17 room where inside that window we've got a lot of plants that
18 relies on the sun, too. So that's the other issue.

19 BZA CHAIR JORDAN: So this building is over on the side
20 where the sun would come through?

21 MR. LEWIS: Yes.

22 BZA CHAIR JORDAN: Okay, thank you. Ms. Lewis? Are
23 you related, Ms. Lewis?

24 MS. LEWIS: I am.

25 BZA CHAIR JORDAN: We already talked about the house.

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1 So you're just going to add to what he said, right?

2 MS. LEWIS: Substantially, yes.

3 BZA CHAIR JORDAN: Yes, that's okay. You were trying
4 to throw a curve ball. I got you. I'm just joking with you.
5 Then let's go to Miss --

6 MS. GLOVER: Glover.

7 BZA CHAIR JORDAN: -- Glover, please.

8 MS. GLOVER: Yes. I live at 258 15th Street.

9 BZA CHAIR JORDAN: 258?

10 MS. GLOVER: Yes, sir.

11 BZA CHAIR JORDAN: Okay.

12 MS. GLOVER: That's two doors to the left of the
13 property. And there is, as Mr. Lewis already stated, there
14 is a major issue with parking. We pay residential parking to
15 be on that block as public parking. And already having the
16 four units with over ten apartments in each unit, and to add
17 five more is a great concern.

18 And my house is the last house that has rear parking.
19 So I'm concerned to how this would affect me getting in and
20 out. Apparently I do have situations also where I can't get
21 out the back of my yard in the morning because someone is
22 blocking me that is parked in the alley from another residence
23 or maybe visiting another residence.

24 There is a firehouse directly behind us also. And that
25 firehouse need to be able to get in and out of that alley. And

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1 I'm concerned about how this would affect us as far as the back
2 side of the house is concerned.

3 BZA CHAIR JORDAN: So let me ask you, is there a way,
4 no let me skip that and come back. Do you have residential
5 parking permits in that area?

6 MS. GLOVER: Yes we do, sir.

7 BZA CHAIR JORDAN: Okay.

8 MS. GLOVER: And we pay for it. And we have the D.C.
9 Government coming down the street to see with those with
10 parking permits. And my concern is to give this resident
11 parking permit specialty on that block is almost like it takes
12 the seniority from Mr. Lewis who was raised there and I've been
13 there over two decades to give this unit --

14 BZA CHAIR JORDAN: You really open the door, people
15 claim seniority on the blocks. But I understand what you're
16 saying. That's an interesting conversation throughout the
17 district. Okay. And so your issue's parking?

18 MS. GLOVER: Yes.

19 BZA CHAIR JORDAN: As any neighborhood, we have parking
20 issues. Thank you.

21 MS. GLOVER: You're welcome.

22 BZA CHAIR JORDAN: Let me look at my notes here.

23 ZC CHAIR HOOD: Let me make sure I understand, Mr.
24 Chairman. So Mr. Lewis, you do have RPP in your neighborhood?

25 MR. LEWIS: Yes.

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1 ZC CHAIR HOOD: I just want to make sure. I want to hear
2 it from them. I just want to make sure I understand.

3 BZA CHAIR JORDAN: Okay.

4 MR. LEWIS: Yes.

5 BZA CHAIR JORDAN: Yes, Mr. Kaffer?

6 MR. KAUFER: Kaufer.

7 BZA CHAIR JORDAN: Kaufer. Yes?

8 MR. KAUFER: Yes, I can't add an awful lot to what
9 they've said. They're neighbors. I've lived 246 which is two
10 doors away from the property in question. Been there 35 years,
11 and Keith was one of the first guys I met when I moved in there.

12 But parking is a killer. We've had a significant
13 increase in demand and no increase in supply of parking. And
14 it comes 8 or 9 o'clock at night for some of these ladies who
15 come home from work, they have to go around the block. To me
16 it's an open and shut case.

17 BZA CHAIR JORDAN: Okay.

18 ZC CHAIR HOOD: May I ask another question? The
19 parking that we're talking about, do you think the
20 over-abundance is coming from the apartments? Is that what
21 you're saying?

22 MR. KAUFER: There was full demand because it's
23 residential on both sides of the street.

24 ZC CHAIR HOOD: Okay.

25 MR. KAUFER: So that was the base demand was when I moved

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1 in, when I moved in with Keith. And since then --

2 ZC CHAIR HOOD: And because it's residential, and
3 because it's residential, folks in the apartments can apply
4 for RPP also?

5 MR. KAUFER: Yes. Well they have to in order to park
6 on the street, yes.

7 ZC CHAIR HOOD: Okay.

8 BZA CHAIR JORDAN: Yes, okay. I was about to ask
9 something. From any of the witnesses, what's the percentage,
10 let's say when is parking heavier?

11 MS. LEWIS: I have pictures.

12 BZA CHAIR JORDAN: Okay. Let me also ask this
13 question. Can you say is there any parking spaces that are
14 open during the evening portion, like after 5:00?

15 MR. LEWIS: It varies. Mostly during the evening, of
16 course, you know, people getting off work, coming back home.

17 BZA CHAIR JORDAN: Yes, but afterwards, say 7, 8
18 o'clock.

19 MR. LEWIS: Oh, throughout the night. I mean, I've had
20 to park around the corner several times.

21 BZA CHAIR JORDAN: So on your block, there's probably,
22 what, 90 percent, 95 percent utilization of parking?

23 MR. LEWIS: Yes.

24 MS. GLOVER: Correct.

25 BZA CHAIR JORDAN: All right. Any questions, I'm

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1 sorry, Mr. Sullivan. You want to do it, either way you want
2 to do it. I should have had you do it individuals, but whoever
3 you may want to cross on that question.

4 MR. SULLIVAN: No, thank you, Mr. Chairman.

5 BZA CHAIR JORDAN: All right. Well we thank you for
6 coming, and we understand your issue and appreciate it. Mr.
7 Sullivan, if you can address for us a couple of things. One,
8 the parking issue, and let's make sure we have, and the shading,
9 the shadowing that I think has been discussed by Mr. Lewis.

10 MR. SULLIVAN: Sure. The light and air issue first, of
11 course, the building proposed will be completely a matter of
12 right, height and lot occupancy. And it is a lot away from
13 his property, there's an open lot there.

14 So I don't think there would be a substantial impact from
15 the light and air anyway. But at any rate, this is C2A with
16 a 50 foot height limit, and we're just asking for the parking
17 relief.

18 On the issue of the parking impact, we've certainly
19 sympathize with the neighbors. It seems to me like there's
20 some apartment buildings there and there are guests and
21 residents that make up the bulk of the problem. I don't think
22 a four unit building is going to make a substantial difference
23 in what is there now.

24 DDOT is okay with this and the ANC voted to support this.
25 Office of Planning is fine with it and none of them thought

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1 that there was any impact from the parking. I would add that
2 it hasn't come up, and I'm not sure if we mentioned it here,
3 we're happy to be subject to the RPP restriction, although it
4 was interesting that the amendment came up at the ANC meeting
5 and they shot it down.

6 This particular ANC said they wanted to decouple parking
7 from development and they thought that parking is a shared
8 resource, common resource. But we're fine with it. And I know
9 the Board sees that as a big mitigation of potential impact.

10 BZA CHAIR JORDAN: Yes, I was going to ask you.

11 MR. SULLIVAN: Yes.

12 BZA CHAIR JORDAN: So --

13 MR. SULLIVAN: No, that's all I have on the parking.
14 It's that we would be subject to the RPP and that would mitigate
15 any impact on this particular block.

16 BZA CHAIR JORDAN: All right. Now let's turn to Office
17 of Planning. I'm sorry, Mr. Cochran. Is there anything else
18 you need to add to your report or what do you -- or the response?

19 MR. COCHRAN: No, sir. We continue to support the
20 requested variance from parking, noting the conditions of the
21 site preclude any parking being located on the site. For the
22 record, my name is Steve Cochran, Office of Planning.

23 MALE PARTICIPANT: Can we clarify who he is and who he's
24 --

25 BZA CHAIR JORDAN: I'm sorry, thank you. Identify

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1 yourself please, again. Again.

2 MR. COCHRAN: For the record, my name is Steve Cochran,
3 D.C. Office of Planning.

4 BZA CHAIR JORDAN: Okay, thank you. Any questions,
5 Board, for Mr. Cochran? Applicant, any questions for Office
6 of Planning?

7 MR. SULLIVAN: No questions, thank you.

8 MR. KAUFER: Could I make a comment?

9 BZA CHAIR JORDAN: No, I'm sorry, you can't. That's
10 the witnesses --

11 MR. KAUFER: Can I ask him?

12 BZA CHAIR JORDAN: No, you cannot. You're not a party
13 to this. It's a courtesy to allow people have three minutes
14 to speak. It's just what our procedure is. So --

15 MR. KAUFER: I think I'm less than my three minutes.

16 BZA CHAIR JORDAN: No, you already used that when you
17 spoke already.

18 ZC CHAIR HOOD: I want to go back to this parking issue.
19 Indulge me if I missed something. But it's a real issue that
20 at least the Commission is dealing with across the City. I
21 don't really think that it works, if that's what you're
22 proffering and that's what you wanted to --

23 (Off microphone comment)

24 ZC CHAIR HOOD: Yes. And if that's what we're going to
25 offer. I want to make sure that the residents who are dealing

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1 with parking, because I can tell you I've gone on a case about
2 three or four years ago and we're still hearing it about
3 parking.

4 Those are real serious issues and I want to make sure
5 that we start really taking issues into heart because, I mean,
6 people are coming down, neighbors are complaining. We live
7 in the city, too. They're complaining.

8 And I can tell you, you say it doesn't seem like four
9 or two is very minimal to add, and I'm just using that for
10 reference. But if you keep on four or two this week, four or
11 two next week, four or two the week after, at some point in
12 time there's a tipping point.

13 So you know, I don't know where the Board is on this but
14 I'm hearing this argument about parking. And I think we've
15 got four residents who are going to be impacted. So, you know,
16 I'm not going to take it lightly, Mr. Chairman.

17 And I think I really, we really don't know, and we've
18 been through this with DDOT. I know the Zoning Commission has.

19 BZA CHAIR JORDAN: Ms. Lewis, there's nothing you can
20 say at this --

21 (Simultaneous speaking)

22 ZC CHAIR HOOD: Does this stuff really work? I want to
23 hear from Ms. Lewis, it is about parking.

24 MS. LEWIS: Well, I heard a misstatement regarding the
25 --

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1 ZC CHAIR HOOD: Okay, did I make a misstatement?

2 MS. LEWIS: Oh no, not you, sir.

3 ZC CHAIR HOOD: Okay. Well can you correct the
4 statement?

5 MS. LEWIS: I've heard that the building would be a four
6 unit building.

7 BZA CHAIR JORDAN: It's seven, right?

8 (Simultaneous speaking)

9 BZA CHAIR JORDAN: I'm sorry, five. Yes, it's five
10 units, yes.

11 MS. LEWIS: Five times two, possibly ten vehicles.

12 BZA CHAIR JORDAN: Yes, Mr. Hood, I just wanted to say,
13 this Board has been taking parking extremely serious.

14 ZC CHAIR HOOD: I have not said they haven't.

15 BZA CHAIR JORDAN: And we have actually raised the
16 same kind of conversation up to the Department of
17 Transportation because just as you said, these things have been
18 looked at singularly, but there's a cumulative effect. And
19 we've been really hot and heavy on that, at this Board about
20 that.

21 And so I just wanted to make sure that the record was
22 clear where this Board stands.

23 ZC CHAIR HOOD: All right, I want to clear the record
24 also. I do not say about the Board or the Zoning Commission.
25 What I'm saying is we deal with these. And I will tell you

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1 that we know that DDOT tells us that people don't have to apply
2 for RPP.

3 But neither this Board nor the Zoning Commission at this
4 point has any relevance that it's actually working. And it's
5 a point in time that we need to drill down on it and stop talking
6 about it.

7 BZA CHAIR JORDAN: Yes, and also --

8 ZC CHAIR HOOD: That's this Commissioner's point.

9 BZA CHAIR JORDAN: And also a lot of these studies that
10 are saying if you do this and that and the other, then there's
11 not people going to be riding and walking and all that, because
12 that just has to be verified.

13 I understand there's supposed to be a study in the works
14 and has been in the works, but we haven't seen it. Any other
15 questions, anyone, on this matter?

16 MR. LEWIS: Does that include --

17 BZA CHAIR JORDAN: Go ahead, and I'll let you, Mr.
18 Kaufer, just quickly.

19 MR. LEWIS: Because I don't know if we're going to move
20 to the other issue which is shading or --

21 BZA CHAIR JORDAN: Yes, here's the problem. They're
22 not coming here for relief to get anything regarding the
23 structure of the building. If it did, then we have authority
24 to do something with that. They're just simply here asking
25 for parking relief.

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1 Not simply, but they're asking for parking relief. They
2 are going to build this building without any need to get our
3 approval based upon what the regulations already provide. So
4 they're building within the framework of the law.

5 They're coming here when you're going outside the
6 framework to say we cannot do something that the law requires.
7 Their structures, I'm understanding, I'm hearing Mr. Sullivan
8 saying that their structure is being built under the law to
9 the extent that it can be built.

10 So we don't have anything on that. If something happens
11 and you realize that it's not, then I would say that you would
12 go to DCRA and file a complaint with them so they can come out
13 and make sure it's done that way. You might want to even go
14 down beforehand and go find out what has been approved, and
15 then take action beforehand if necessary.

16 I'm going to let Mr. Kaufer, you wanted to say something?
17 Other people got to saying stuff.

18 MR. KAUFER: I'm very troubled over the Department of
19 Transportation making a statement that there's no parking
20 problem on our block, and we live there.

21 BZA CHAIR JORDAN: Well, the Board has made those same
22 exceptions many times at office, Department of Transportation
23 many, many times. And especially, as I said, the cumulative
24 effect because we've had some properties that they've been some
25 areas, some blocks and communities that have been to us

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1 individually.

2 A lot comes, and another lot comes, and another lot
3 comes. And so we ask the questions, Mr. Hood, we ask the
4 transportation is anybody keeping score and adding these
5 things up. And the response was no.

6 ZC CHAIR HOOD: In this case, Mr. Chairman, I think from
7 my standpoint, we've moved along far enough. It's
8 unfortunate. I see this letter here from DDOT. I want to know
9 does it work, is it working? That's where I am before I would
10 move forward in this case. If not, I will be voting against
11 this case today on the premise of what they're asking for as
12 far as parking.

13 BZA CHAIR JORDAN: All right. Is there anything else
14 you wanted to say, Mr. Sullivan?

15 MR. SULLIVAN: Yes. I would say that voting against
16 this case would be a change of course from previous decisions
17 completely. And I don't think this particular application
18 should be subject to an arbitrary ruling like that based on
19 general conditions of parking in the neighborhood.

20 This particular application, he could build something
21 as a matter of right and including commercial here, and not
22 provide any parking. And also, he's uniquely affected here.
23 Everybody else has access to their parking in the back.

24 And he doesn't. And I wish we could have talked about
25 these issues beforehand, but he reached out to these neighbors

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1 several times, and this is the first time we've heard from them.
2 Otherwise we could have talked about maybe easements to go
3 through his property to get to the back of the property to save
4 some, to get some parking off the street that way which he would
5 still be willing to talk about.

6 But I think this Board has decided many times that RPP
7 is a significant mitigation.

8 ZC CHAIR HOOD: Mr. Sullivan, are you aware that, at
9 least from my understanding from DDOT, residential
10 neighborhoods cannot be exempted from RPP? Apartment units
11 also, are you aware of that? It has to be in the commercial
12 street. Are you aware of that?

13 MR. SULLIVAN: This is a commercial street.

14 ZC CHAIR HOOD: This is a commercial street?

15 BZA CHAIR JORDAN: Commercial street you get RPP?

16 MR. SULLIVAN: C2A.

17 ZC CHAIR HOOD: So this is a commercial street. So maybe
18 I'm reversed. So you're making my point, then. You just made
19 my point.

20 MR. SULLIVAN: Well, we'll commit to that anyway.

21 ZC CHAIR HOOD: You'll commit to it but it's no way to
22 enforce it. There's no way to enforce it. And each case, Mr.
23 Sullivan, is done on the merits of the specific case. I don't
24 bring other cases into cases while they set precedent.

25 Each case is done on the merits of that specific case.

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1 So to say that we're doing something unfairly to this applicant
2 I don't think is a true statement.

3 MR. MEHDIZADEH: Can I say something? You mentioned if
4 you relief this parking issue here, there going to be next one
5 and next one and next one. I am the only one entire block that
6 doesn't have access from the parking. Everyone has access
7 from the back alley. I am the only lot that doesn't have the
8 access from the alley.

9 MR. KAUFER: We suggested you knew that when you bought
10 the property.

11 BZA CHAIR JORDAN: Wait a second. Mr. Kaufer, please.
12 I cannot have you do that. I really cannot. In fact, why
13 don't you all just, the witnesses turn your mics off so you
14 don't feel encouraged to do it.

15 Let me ask you something, Mr. Sullivan, this is a
16 commercial street and they have RPP?

17 MR. SULLIVAN: That's what was my impression, yes. And
18 that's I think what these folks testified to and that's what
19 the ANC said as well.

20 BZA CHAIR JORDAN: All right, let me go back. Do you,
21 let me go back to the witnesses. You can turn your mic on.
22 Do you have residential parking permits on this same street?

23 MR. LEWIS: Yes.

24 MS. GLOVER: Yes.

25 MS. LEWIS: Yes, however --

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1 ZC CHAIR HOOD: So let me just say this, Mr. Chairman.
2 That makes my point. We don't know what's going on there.
3 DDOT said you can't do it on a commercial street. Now they're
4 saying they do have it.

5 BZA CHAIR JORDAN: Please, Ms. Lewis.

6 MS. LEWIS: However, we've had residential parking for
7 a long time. At that point, there was only one apartment
8 building. At this point, with the addition of the --

9 BZA CHAIR JORDAN: All right, I know. Okay, this is
10 what we're going to do. I hate to do this, but this is what
11 we're going to do. You think there's some alternatives, I'm
12 hearing you say, Mr. Sullivan, that if you talk to the
13 neighbors, they might grant some easement and allow you to do
14 some things on their lots. Is that what you were --

15 MR. SULLIVAN: It was something we would be willing to
16 explore, yes. Although I think we meet the variance test as
17 currently submitted.

18 BZA CHAIR JORDAN: Yes, I don't know if you do because
19 is there impact on the surroundings?

20 MR. SULLIVAN: No, I don't think there is from four --

21 BZA CHAIR JORDAN: I know you don't.

22 MR. SULLIVAN: And there's --

23 BZA CHAIR JORDAN: You don't. I'm just saying, so is
24 it --

25 MR. SULLIVAN: Neither does the ANC or OP or DDOT.

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1 BZA CHAIR JORDAN: But when it comes down to this issue
2 --

3 (Simultaneous speaking)

4 BZA CHAIR JORDAN: Mr. Sullivan, you know better.

5 MR. SULLIVAN: -- hearing stuff is, I object to that,
6 this round, round, round --

7 BZA CHAIR JORDAN: You can object all day. But okay,
8 I'll tell you what. We'll just, well I won't say that.
9 Whether DDOT makes a recommendation, OP makes a
10 recommendation, this Board is the deciding Board, and you know
11 that better than anybody else.

12 And you don't control this hearing, Mr. Sullivan. We've
13 had some problems even at the last hearing. You don't control
14 this hearing. And I don't know if you're serving your clients
15 properly by debating that with the Board.

16 I tell you what. Mr. Hood is not coming back until --

17 ZC CHAIR HOOD: June the 30th.

18 BZA CHAIR JORDAN: Within a --

19 ZC CHAIR HOOD: If I may, too, I can do a --

20 BZA CHAIR JORDAN: That's right.

21 ZC CHAIR HOOD: I think we can do some of what, I think,
22 where you're going. I think it could be worked out. I think
23 it can, I'm not sure.

24 BZA CHAIR JORDAN: But within authority of the Board,
25 without needing consent from any party, the Board can continue

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1 this for 30 days. And so let's find a date within 30 days in
2 which I'm going to continue.

3 And I'm going to ask if that the parties, that the
4 Applicant work with the neighborhoods and see if there's
5 another way that you can try to mitigate the parking, and that
6 some type of parking mitigation be submitted to the Board. So
7 that's going to be the order, unless the Board objects.

8 ZC CHAIR HOOD: No, I actually concur. And I thank you
9 for indulging that, Mr. Chairman.

10 BZA CHAIR JORDAN: Date, please, within 30 days.

11 MR. MOY: The date that's good for the Board on this
12 docket would be June 16th, Mr. Chairman.

13 BZA CHAIR JORDAN: So this will be on the docket from
14 June 16th. The Applicant needs to file by what date, the 9th?

15 MR. MOY: June 9th.

16 BZA CHAIR JORDAN: June 9th any TDM measures. Okay?
17 Very good. We appreciate you all coming. Thank you very
18 much.

19 MR. KAUFER: Thanks.

20 BZA CHAIR JORDAN: Let's take a five minute break.

21 (Whereupon, the above-entitled matter went off the
22 record at 12:07 p.m. and resumed at 12:17 p.m.)

23 MR. MOY: To the table then, parties to Application
24 Number 18972, Greenway Apartments, LP. Mr. Chairman, this is
25 a request for a variance relief from the loading requirements

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1 under 2201.1 at 3605 through 3615 Minnesota Avenue Southeast.

2 BZA CHAIR JORDAN: All right. I think we have some
3 procedural issues with this case. Otherwise --

4 (Off the record comment)

5 BZA CHAIR JORDAN: I guess you could. I guess you
6 could. I don't think they will say anything anyway. They
7 haven't on any of them. You're right. What am I doing here?
8 All right. Please identify yourselves.

9 MR. BROWN: Patrick Brown from Greenstein DeLorme &
10 Luchs, on behalf of the applicant.

11 MR. GALLAGHER: I'm Tom Gallagher. I'm the managing
12 member of the applicant.

13 MR. KNUDSON: Scott Knudson, with Wiencek & Associates.
14 We're the architect.

15 MS. WHITE: Nicole White, Symmetra Design.

16 BZA CHAIR JORDAN: So there's no parking relief?
17 You're just seeking loading relief. Is that right?

18 MR. BROWN: That's correct.

19 BZA CHAIR JORDAN: I don't see in the record where this
20 matter has been referred to Department of D.C. Public Schools.
21 Has that happened? Is there some, did O.Z. send a letter to
22 D.C. Public Schools.

23 MR. BROWN: Just a minute, Mr. Chairman.

24 (Off the record comments)

25 MR. MOY: On a quick scan, Mr. Chairman, I don't see a

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1 BZA referral.

2 BZA CHAIR JORDAN: All right. I don't think this has
3 any impact upon the schools anyway. We can, as indicated or
4 recommended -- Have you had a conversation with the schools
5 on any issues?

6 MR. BROWN: No.

7 MR. GALLAGHER: We've not, Mr. Chairman. No, sir.

8 MR. BROWN: This is a senior, all senior building. So
9 the likelihood of that being an issue --

10 BZA CHAIR JORDAN: Okay.

11 MR. BROWN: -- is --

12 BZA CHAIR JORDAN: Okay. So then, I'll put it for the
13 Board that we waive the provision that this referral to D.C.
14 Public Schools, since it hasn't happened. Is that acceptable
15 to everybody? Okay. That's what we'll -- Then the head now
16 is going to be by consent. All right. What is our position
17 here? Okay. So you've offered some TDM. What's this, is
18 this DDOT's TDM? Where are you on DDOT's TDM?

19 MR. BROWN: We've indicated that we're willing to
20 comply with the --

21 BZA CHAIR JORDAN: One year Capital Bikeshare?

22 MR. BROWN: Yes.

23 BZA CHAIR JORDAN: Why are we giving Capital Bike --
24 You're just here for loading, right?

25 MR. BROWN: This is an R5A special exception for new

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1 construction of multi-family, and then for the loading
2 variance.

3 BZA CHAIR JORDAN: Are you having parking on site?

4 MR. BROWN: Yes.

5 BZA CHAIR JORDAN: How much parking?

6 MR. BROWN: Twelve spaces.

7 BZA CHAIR JORDAN: How much do you require?

8 MR. BROWN: I think it's ten. Because it's publicly
9 assisted senior housing it's one to six. So we're providing
10 in excess of the ten that would be required.

11 BZA CHAIR JORDAN: So, why is there Capital Bikeshare,
12 Carshare membership condition?

13 MR. BROWN: There will be employees. They'll also be,
14 even though it's only a small building there will be employees.
15 There will be people coming to the building. So it's --

16 BZA CHAIR JORDAN: Okay. That's all right. If you're
17 accepting that, then it's fine. We'll roll with it. Posting
18 all TDM commitments on line. What about the lobby screen which
19 has been suggested? The lobby screen with information for
20 transit?

21 MR. BROWN: Yes.

22 BZA CHAIR JORDAN: You produced a traffic study that
23 both DDOT and Office of Trans, of Planning are okay with, Office
24 of Transportation really.

25 MS. WHITE: Would it be appropriate to ask a question

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1 about the last TDM measure? You know that --

2 BZA CHAIR JORDAN: Go ahead. What's --

3 MS. WHITE: I didn't see the --

4 BZA CHAIR JORDAN: Office of Planning?

5 MS. WHITE: No. I didn't see the, you said the transit
6 display listed in DDOT's report?

7 BZA CHAIR JORDAN: Office of Planning.

8 MS. WHITE: Oh, in Office of -- Okay, thank you. Sorry.

9 BZA CHAIR JORDAN: Okay. I don't know if we need to
10 hear anything from this applicant. Board, anything you need?
11 Then lets', unless you think you need to say something to us,
12 we can proceed on, Mr. --

13 MR. BROWN: I think we should move forward.

14 BZA CHAIR JORDAN: Okay. Let's turn to the Office of
15 Planning, see if there's anything Ms. Thomas wants to add.

16 MS. THOMAS: Good morning, Mr. Chair, Office of
17 Planning. We have nothing further to add. Thank you.

18 BZA CHAIR JORDAN: Anyone from the Department of
19 Transportation here? There's a letter of no objection,
20 Department of Transportation. And there was certainly those
21 TDMs that we just went over. Anyone from ANC 7F? They have
22 a letter. Oh, the letter, did you present to ANC?

23 MR. BROWN: Mr. Chairman, we presented to the ANC twice.
24 And they were, they did not -- There was a motion moved, but
25 it was not seconded. And so, the meeting adjourned earlier

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1 this month, actually in April, without a vote.

2 And subsequent to that Elizabeth Travers, who was our
3 single member, called a public meeting, or called a meeting
4 of the constituents nearby. Had that meeting. And she's, I
5 think submitted a letter of support from here. But we have
6 nothing in the record from the ANC.

7 BZA CHAIR JORDAN: Okay. All right. But you did
8 present, so --

9 MR. BROWN: We did present, twice, sir.

10 BZA CHAIR JORDAN: Twice.

11 MR. BROWN: Yes, sir. Yes, sir.

12 BZA CHAIR JORDAN: Is there anyone here wishing to speak
13 in support of this application? Anyone that supported this
14 application?

15 MR. HAGLER: Good morning.

16 BZA CHAIR JORDAN: Good morning. Please identify
17 yourself for us.

18 MR. HAGLER: My name is Ronnie Hagler. And I would
19 support this matter. I've lived in here for many years. It
20 would be an improvement of the area, for the situation with
21 the crimes. It would be reduced. So, I'm very supportive of
22 this matter.

23 BZA CHAIR JORDAN: Okay. Well, we appreciate you
24 coming down and letting us know your support for the project.
25 Is anyone else wishing to speak in support? Anyone else to

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1 support? Anyone in opposition? Anyone in opposition? All
2 right. Then we will close the record on this matter. And is
3 the Board ready to deliberate? Somebody else want to make a
4 motion, or something?

5 ZC CHAIR HOOD: Mr. Chairman, I would move that we
6 approve the request, I think, of special exception relief for
7 353, and also the relief, the variance relief for 2201, and
8 ask for a second.

9 MEMBER HINKLE: Second.

10 BZA CHAIR JORDAN: Motion made and seconded.
11 Additional discussion? All those in favor, aye?

12 (Chorus of ayes)

13 BZA CHAIR JORDAN: Those opposed, nay. The motion
14 carries. Mr. Moy.

15 MR. MOY: Did that motion include --

16 BZA CHAIR JORDAN: Oh, the conditions. Yes, with the
17 conditions.

18 ZC CHAIR HOOD: Yes. Included with the conditions as
19 so noted by the Chairperson.

20 BZA CHAIR JORDAN: All right. So with that, then the
21 Sec would record the vote as four to zero on the motion of Mr.
22 Hood, seconding the motion, Mr. Hinkle. This is for approving
23 the relief being requested, along with the conditions. Also,
24 in support Vice Chairperson Heath and Chairman Jordan. Fourth
25 seat vacant. Motion carries four to zero. Summary, please.

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1 MR. MOY: Thank you.

2 MR. BROWN: Thank you very much.

3 BZA CHAIR JORDAN: Thank you.

4 MR. MOY: Oh, this is the shadow studies I didn't
5 understand. Our last case was --

6 MR. BROWN: Ronnie, thank you so much for being here
7 today.

8 MR. HAGLER: Okay.

9 (Off the record comment)

10 MR. MOY: Next case to the table, parties to Application
11 Number 18992 of Congressional 1015 E Street, LLC. Mr.
12 Chairman, this is a request for multiple variance relief at
13 105 E Street Southeast, Square 973, Lot 813.

14 (Pause)

15 BZA CHAIR JORDAN: Okay. All right. Please identify
16 yourselves.

17 MR. KADLECEK: Good afternoon. I'm Cary Kadlecek from
18 Wilson & Storrs, on behalf of the applicant.

19 MR. ATHEY: Good afternoon, I'm Brian Athey,
20 Congressional 1015 E Street, LLC, who owns the property, as
21 the applicant.

22 MR. PHILLIPS: James Phillips, Workshop T10,
23 architects for the project.

24 MS. HOLLAR: Desirae Hollar with Workshop T10.

25 MS. CROWDER: Janet Crowder, business owner, property

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1 owner on 11th Street.

2 MR. FORD: Michael Ford, business owner, property owner
3 on 11th Street, 505.

4 MR. RHODES: Neil Rhodes, 503 11th Street Southeast.

5 BZA CHAIR JORDAN: We do have other microphones at other
6 seats if you want to, don't have to share. Okay. Are you here
7 for support of the application?

8 MR. FORD: Opposing.

9 MR. RHODES: Opposing.

10 BZA CHAIR JORDAN: Opposing. What have you got? All
11 right, so let's start. I think we understand the project, Mr.
12 Kadlecek. But I need to understand what's the exceptional
13 condition, and the practical difficulty. One of the questions
14 I have is that HPRB prefers you to maintain the side yard, the
15 non-conforming side yard. But that's not part of any
16 direction from them.

17 MR. KADLECEK: Right. I'll let the architects speak to
18 that a little bit more. But as you know, nothing at HPRB is
19 set in stone. But they did make it quite clear in their
20 resolution that it is something that they very much prefer in
21 this case, and throughout the process.

22 BZA CHAIR JORDAN: One doesn't control the other, but
23 still --

24 MR. KADLECEK: Right. But, you know, as we explained
25 in our application, it's sort of a rock and a hard place kind

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1 of situation. Can't do the fully conforming side yard, can't
2 do the closed off side yard. Because HPRB, from the direction
3 we understand, wouldn't prefer that, or necessarily approve
4 that. But I'll let the architects explain that interaction
5 a little bit more.

6 MS. HOLLAR: Hi. We presented to the HPRB a couple of
7 times. We were approved in February of this year. And the
8 reason why we decided to keep the side yard along with HPO's
9 direction --

10 BZA CHAIR JORDAN: You were approved by HPRB?

11 MS. HOLLAR: Correct.

12 BZA CHAIR JORDAN: They didn't order that the side yard
13 maintain. They just said they preferred?

14 MS. HOLLAR: They preferred it, correct. And the
15 reason why is because it's a contributing building in the
16 historic preservation, in the Historic District of Capitol
17 Hill. So it's not a non contributing. It's a contributing
18 building. It's a feature that's been there since the building
19 was built. So we wanted to honor the original block of the
20 house.

21 MR. PHILLIPS: All right. And if I may, you know, with
22 previous meetings with Matt LaGrant we had a preliminary PDRM.
23 Every direction we had had an existing side yard, which should
24 be maintained if it's less than five feet. This side yard is
25 less. This side has only 24 inches.

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1 BZA CHAIR JORDAN: Okay. And so, but to reach the test
2 we have to show that there's an exceptional situation or
3 condition that provides practical difficulty, right?

4 MR. KADLECEK: Correct.

5 BZA CHAIR JORDAN: But that's not the case?

6 MR. KADLECEK: Well, the test is whether complying with
7 the regulations would be burdensome, not impossible. And
8 we've shown two cases that --

9 BZA CHAIR JORDAN: Creates a practical difficulty.

10 MR. KADLECEK: Correct. That's the practical
11 difficulty.

12 BZA CHAIR JORDAN: But it's not difficult, it's
13 preferred.

14 MR. KADLECEK: Well, it's difficult if another agency
15 is telling you that this is what we want.

16 BZA CHAIR JORDAN: They didn't tell you, they
17 suggested.

18 MR. KADLECEK: Well, that was the condition. And I'll
19 let the architects speak to this, because I wasn't there. But
20 my understanding, and I rewatched the video, was that was the
21 condition of the resolution that the Board Chair proposed.

22 And what was adopted by the HPRB, was they want that,
23 that's what they approved as part of that project, and that
24 they were explicit about it. That is wasn't something that
25 was just part of an overall package they approved. They were

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1 explicit about the side yard condition.

2 MR. PHILLIPS: If I may add something? We've met with
3 HPO, you know, we've gone through two iterations of this
4 project. And we've met with, you know, Sarah VanLandingham
5 at the Park Preservation Office multiple times. And the
6 guidance that we've received every time is, we'd like you to
7 keep the side yard.

8 If you walk around Capitol Hill, and walk down 11th
9 Street, for example, there are many, you know, there are many
10 existing conditions like this throughout the Hill. In fact,
11 my wife used to live at one of them on 11th Street. I lived
12 at 10th and Independence for, you know, quite awhile. We'd
13 walk by these conditions all the time.

14 And Historic said, the Historic Preservation Office
15 said, you know, repeatedly, you know, we want you to do this,
16 you know, we want you to keep the side yard. We don't believe
17 closing in side yards, which is obviously one of the options,
18 you know, per the zoning regulations, you know. It's
19 consistent with, you know, with the historic nature of the
20 property. And that's the guidance we've received, you know,
21 consistently.

22 MR. KADLECEK: And if I might add, certainly if we could
23 have just closed in the side yard we wouldn't have to be here.
24 So, you know, if we didn't have a strong understanding from
25 the HPRB that this is the condition that they urge, you know,

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1 no reasonable developer would have chosen a path where they
2 have to go through a discretionary titlement process.

3 But the strong HPRB preference is to preserve the side
4 yard. And thus, we're -- And then they understood that. They
5 said that in their recitation of the resolution, that we
6 understand it requires BZA approval. However, this is what
7 we're approving.

8 MR. ATHEY: I mean, they told us, we want you to do this,
9 which is why we're here. And I would have never chosen this
10 path if they had given me any indication that, go ahead and
11 close the side yard. In fact, as you probably saw on our
12 pleading, we own the property at 1013 E Street as well. And,
13 you know, that's really the property affected by your decision
14 today. So, that's really why we're here today.

15 MR. MOY: Before any questions we need to ask some
16 questions.

17 BZA CHAIR JORDAN: All right. Is there anything else
18 you need to present to us, Mr. Kadlecek?

19 MR. KADLECEK: I don't believe so. I think we've
20 stated our case pretty clearly. We're happy to respond to any
21 questions that the Board may have.

22 BZA CHAIR JORDAN: We do, well, we can come back to that
23 in rebuttal, when we go through the other witnesses who are
24 in opposition. Let's turn now to the Office of Planning, and
25 see what Ms. Vitale has for us, anything in the issue.

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1 MR. KADLECEK: Yes.

2 MS. VITALE: Good afternoon, Mr. Chair, and members of
3 the Board. The Office of Planning rests on the record in
4 support of the application. And I can answer any questions
5 that you might have.

6 BZA CHAIR JORDAN: Okay. Board, any questions of
7 Planning? All right. Applicant, any questions of Planning?

8 MR. KADLECEK: No questions.

9 BZA CHAIR JORDAN: Anyone from the Department of
10 Transportation? There's no report from DDOT, right? Did you
11 get a DDOT report?

12 MR. KADLECEK: We did not.

13 BZA CHAIR JORDAN: And is anyone here from ANC 6B? ANC
14 6B? What happened at ANC 6B?

15 MR. KADLECEK: They voted to take no position on the
16 application.

17 BZA CHAIR JORDAN: Okay. So you presented and they, no
18 one was for, and people --

19 MR. KADLECEK: Well, there were people for it, there
20 were people against it. But they decided to take no position.

21 BZA CHAIR JORDAN: Okay.

22 (Off the record comments)

23 BZA CHAIR JORDAN: All right. Anyone here wishing to
24 speak in support of this application? Anyone in support?
25 Those in opposition, Mr. Crowder, Ms. Crowder, I'm sorry. Ms.

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1 Crowder, please. Yes. You get three minutes. Please tell
2 us what's on your mind.

3 MS. CROWDER: Okay. My name is Janet Crowder. I --

4 BZA CHAIR JORDAN: Why don't you pull the mic closer to
5 you.

6 MS. CROWDER: Okay.

7 BZA CHAIR JORDAN: Yes, okay.

8 MS. CROWDER: I own and occupy 507 11th Street. So my
9 first issue of concern is, the back of my building, since I
10 have occupied it, since 2001 I've always had free and clear
11 access and built almost always from the, almost completely on
12 the back of my property, just a few inches.

13 It was an old addition that was put on before I was born.
14 So I've always been able to go to the back of my building. I've
15 got a standpipe and drains in the back, and maintain the back
16 of my building. So the way the project is I would have
17 difficulty if, you know, with that.

18 BZA CHAIR JORDAN: With the, so it's blocking, it will
19 block your access to --

20 MS. CROWDER: Yes. Because I came through the other
21 yards. I've always maintained my own key to five, from the
22 1015 property. I was given by the former owners to just come
23 and go, and do my yearly maintenance, twice a year to the back
24 of the building and to the drains, or to the drain.

25 And the second issue I'd like to read. And it's, the

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1 Board of Zoning has the discretion to impose higher standards,
2 or the standards required by any statute, or any other
3 municipal regulations. This is especially true when it comes
4 to public good.

5 Because trees are such an important contributor to the
6 public good, and there is an attached letter from Casey Trees,
7 the D.C. Department of Transportation has identified what
8 designates the critical root zone, or the CRZ of a tree that
9 DDOT requires to be protected during construction.

10 The way that the CRZ is calculated is that for every inch
11 of diameter of the trunk of the tree, measured four and a half
12 feet above ground, one foot of protection is required.
13 Additional protection is required for trees with a
14 circumference of 55 inches or greater. Our neighbor, Lindy
15 Nats, American Elm at 1011 E Street Southeast is 132 inches
16 in circumference.

17 And there is an attached ISA certified arborist report.
18 And I have a Google Earth image. And I believe you got copies.
19 The diameter is 42 feet measured in a circle around the tree.
20 It's CRZ not only crosses the entire width of 1013 E Street,
21 it extends into 1015 and through. And the actual roots extend
22 into Mr. Ford and to Neil Rhodes' property.

23 The CRZ has been established because merely the
24 temporary parking of equipment or construction materials
25 within the CRZ can damage a tree's roots. And it is therefore

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1 prohibited. In this case Mr. Athey proposes the permanent
2 removal of roots and soil within the CRZ, in order to build
3 basement apartment units.

4 According to the arborist reports the result of this
5 excavation will be the irreversible decline in health, and
6 death of this tree. The death will take five to ten years.
7 And in the meantime Mr. Athey will have sold his interest in
8 the units and moved to future projects. And we the community
9 will be left holding the proverbial bag, faced with the problem
10 of what to do with a dying colossal 80 year old tree that's
11 life expectancy is about 300.

12 BZA CHAIR JORDAN: Have you talked to, I guess
13 Environment or anything about this tree?

14 MR. RHODES: No. We didn't know who to talk to.

15 BZA CHAIR JORDAN: Okay.

16 MR. RHODES: We would welcome any direction.

17 BZA CHAIR JORDAN: Is this tree on this property?

18 MR. RHODES: No. It's on the map that we provided.

19 BZA CHAIR JORDAN: Right.

20 MR. RHODES: You have a picture of this. I gave out
21 these because this wasn't on line. I just brought them in.
22 And I think I gave everyone a copy. It should be --

23 BZA CHAIR JORDAN: Right. But where is the subject
24 property, compared to where this tree is?

25 MR. RHODES: May I step forward to show you?

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1 BZA CHAIR JORDAN: Yes. Just to see where -- Because
2 it may, to keep you --

3 MS. CROWDER: It's in the front, with the X.

4 MR. RHODES: This is the property --

5 BZA CHAIR JORDAN: Got it. Okay. All right. So, I
6 need to get you back on the microphone. So it would be the
7 property with the X. Oh, I see it. I see it. It's --

8 (Off microphone comment)

9 BZA CHAIR JORDAN: I see it. Thank you. All right.

10 (Off microphone comments)

11 BZA CHAIR JORDAN: But it's -- So you're saying the
12 roots run on to this property? Is that what you're saying?

13 MS. CROWDER: The roots run through their property, all
14 the way through to our properties on 11th Street.

15 BZA CHAIR JORDAN: So, if they don't change the
16 condition of the property from the side yard standpoint, they
17 leave the side yard as it is, is it affecting this tree?

18 MR. RHODES: Yes. The arborists report said the tree
19 will die. This is a, just for a bit of scale. This is an 18
20 wheeler truck.

21 BZA CHAIR JORDAN: Yes. But I'm talking about the side
22 yard though, not their full development.

23 MR. RHODES: The roots grow approx, they don't grow in
24 an exact --

25 BZA CHAIR JORDAN: What I'm saying, if they don't

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1 disturb the side yard then they have not -- If the side yard
2 is not disturbed, whatever side yard is going to be there,
3 whatever roots is going to be there at the side yard point it's
4 going to be. What they're here for is to ask for relief for
5 one thing, and that's the, I think one thing, right, the side
6 yard. They're not here getting permission to build a
7 building.

8 MS. CROWDER: Okay.

9 BZA CHAIR JORDAN: Okay.

10 MR. RHODES: Well, their application says they are I
11 thought. The application that I have --

12 BZA CHAIR JORDAN: Well, they're asking --

13 MR. RHODES: -- says they want this variance to allow
14 the building.

15 BZA CHAIR JORDAN: No. To keep, a variance from the
16 side yard requirement, meaning that they'll keep the side yard
17 as is in a non-conforming way.

18 MR. RHODES: In there --

19 MS. CROWDER: I'm showing --

20 MR. RHODES: -- it says, why do they want it, variance
21 for the side yard requirements and non-conforming to allow an
22 addition to a building.

23 BZA CHAIR JORDAN: Yes. But that's just added words.
24 It's the first part.

25 MR. RHODES: They said it, I didn't.

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1 BZA CHAIR JORDAN: Yes. Well, all right. Next then.
2 You have three minutes. Well, let's go back on the clock, Mr.
3 Moy, and have our next witness.

4 MR. FORD: Who's that?

5 MS. CROWDER: Neil or you.

6 MR. FORD: Okay. I had actually understood the total
7 impact of the variance must be considered. My name is Michael
8 Ford.

9 MR. RHODES: That's true.

10 MR. FORD: I'm a 20 year resident, 20 year plus, of 505
11 11th Street. And I'm opposing it because of the impact on my
12 light and air, the fact that I will lose emergency evacuation
13 to the alley. We will be the only buildings on the block cut
14 off from the alley, the central alley of --

15 BZA CHAIR JORDAN: The total impact of the variance, if
16 we granted a variance of the side yard requirement.

17 MR. FORD: So they're proposing not to do anything with
18 the side yard as it exists? Anything that moves the
19 construction of the building forward contributes to the whole
20 I should think.

21 BZA CHAIR JORDAN: Well, I don't know if that's correct.

22 MR. FORD: I mean, you know, you can take the pieces,
23 you know.

24 BZA CHAIR JORDAN: But I'm telling you what, we're kind
25 of limited to deal with remedial measures. Our decision has

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1 to flow from the relief being requested. You know, we're kind
2 of handcuffed here, what we do.

3 MR. FORD: But one of the things that's happened, it
4 took us some -- Since we're not lawyers, we're not developers,
5 we're not realtors, it takes us a long time --

6 BZA CHAIR JORDAN: Yes.

7 MR. FORD: -- to get up to speed.

8 BZA CHAIR JORDAN: Yes. I understand.

9 MR. FORD: It went through so many processes before we
10 even knew what was going on.

11 BZA CHAIR JORDAN: Yes. And it happens so much. Yes.
12 I understand that.

13 MR. FORD: It's kind of, I won't say not fair, but
14 anyway.

15 BZA CHAIR JORDAN: And here's the other thing. It's a
16 little different if they were going to change the status quo
17 regarding the side yard. I'm trying to think how it relates
18 to bringing the impact that you're talking about. And I want
19 you to continue. But I'm just --

20 MR. FORD: The main think that I'd like to talk about,
21 aside from, as I say, my lack of escape route, the decrease
22 in my property value, and the fact that I'll lose a tree,
23 because it's right on the property line. They're going to have
24 to cut it down and remove it.

25 BZA CHAIR JORDAN: You're the adjacent property owner?

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1 MR. FORD: Yes. Yes.

2 BZA CHAIR JORDAN: Okay. Mr. Athey provided a sun
3 study to you folks, which I don't understand. I'm going to
4 go back and --

5 MR. FORD: Ours differs order of magnitude. And I
6 wanted to explain those differences.

7 BZA CHAIR JORDAN: Well it's a good question. Let me
8 finish here and rest. And I'm going to give you an opportunity
9 to come back on the sun study. Because I meant to ask questions
10 about the sun study, which I didn't understand from the
11 applicant.

12 MR. FORD: Okay.

13 BZA CHAIR JORDAN: Okay. And thank you, I was remiss.
14 I meant to ask those questions. So, why don't we come back
15 to your sun study question. And why don't we have you, Mr.
16 Rhodes, any other thing you wanted to say?

17 MR. RHODES: Yes, I did. My rear property line abuts
18 the east property line of 1015 Southeast, for which this
19 variance is being requested. And I strongly oppose the
20 granting of any variance or exception for this proposal. I
21 think the applicant doesn't meet the requirements.

22 For one, I think that Mr. Athey's claim, I'm not quite
23 sure what practical difficulty is. But I know that he paid
24 \$665,000 dollars for this property. The District's assessed
25 value is \$736,100 dollars, or \$71,100 above what he paid. The

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1 market value would be much greater than that. I believe that
2 he could clearly sell this property without doing anything at
3 a, or disturbing the tree, us, anything, at a substantial
4 profit.

5 I'm not an expert in zoning. But I wanted to show you
6 what would happen to my property, and the property of my
7 neighbor, Michael Ford, when this building is constructed.
8 I've attached this, which you have. And it's on line. I mean,
9 our properties will be devastated by this difference.

10 This is my backyard now, looking at this magnificent
11 record historic tree. This is what it's going to look like
12 when his wall is up. This is Mr. Ford's yard. This is what
13 his yard's going to be looking at. This is on our property
14 lines, directly on our property lines.

15 And he's taking a dog leg off this old building. In the
16 winter this 24 foot high wall will block all the warming rays
17 of the sun. In the summer, this will absorb heat all morning
18 long. And then it's going to give off heat all afternoon. And
19 radiating enormous amounts of heat for us, throughout the
20 afternoon and evening.

21 And most importantly, the building extension will block
22 any emergency services from access to the rear of our
23 properties. If this proposed construction is permitted,
24 mine, Mr. Ford, and the Dry Cleaner at the corner will be the
25 only buildings on this block that will be completely blocked

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1 from the rear. And there was a fire, a serious fire on 2000

2 --

3 BZA CHAIR JORDAN: One second please.

4 MR. RHODES: Okay.

5 BZA CHAIR JORDAN: You're right. Okay, got it. Thank
6 you. That's where we are. Will you stay on the microphone,
7 please?

8 MR. RHODES: The final thing I'd like to say is,
9 Frager's Hardware is directly across 11th Street from us. And
10 it was totally destroyed two years ago in one of the most
11 serious fires in the history of Capitol Hill.

12 And it is not inconceivable that in the event of a future
13 fire or other calamity, if either Mr. Ford or I were unable
14 to escape from the front of our houses, as we were in the
15 Frager's fire, we could not go out the front of our houses.
16 And the fumes came into my house. And I had to retreat out
17 the back. And we would find ourselves, if they build this
18 building, we would find ourselves trapped in our back yards.
19 And I believe this is clearly a detriment to the public good.

20 BZA CHAIR JORDAN: Got it.

21 MR. RHODES: I see probably --

22 BZA CHAIR JORDAN: Any way you can give it to us. Thank
23 you very much.

24 MR. RHODES: Thank you.

25 BZA CHAIR JORDAN: Let me -- Thank you. Mr. Kadlecsek,

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1 I'm trying, I've been trying -- Let me tell you, I went over
2 these shadow studies over and over again, trying to understand.
3 Because one, I had to guess which was the subject building.
4 I guess that was the -- Where's my study? And how it was
5 designated. Let's talk about your shadow study.

6 MR. KADLECEK: Sure. I'll let the architect walk
7 through those. Just as a preface, we provided those at the
8 request of the neighbors and the ANC, which is why we submitted
9 them. But as we maintain, the evaluation of the impact should
10 really be on the west side of this, because that's the relief
11 we're seeking.

12 BZA CHAIR JORDAN: This should be on the west side?

13 MR. KADLECEK: Sorry?

14 BZA CHAIR JORDAN: What do you mean the emphasis should
15 be on the west side?

16 MR. KADLECEK: The rear yard relief that we're seek,
17 sorry, the side yard relief we're seeking is for the western
18 side of the property.

19 BZA CHAIR JORDAN: The western side of the property
20 according to your shadow studies is where? Where is that?

21 MS. HOLLAR: It's 1013 E Street.

22 MR. KADLECEK: Yes.

23 MS. HOLLAR: It's to the right if you're looking at --

24 BZA CHAIR JORDAN: The one with the little garden in
25 front, and steps, right?

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1 MS. HOLLAR: Oh, where --

2 MR. KADLECEK: 1013, not into the -- Yes.

3 MS. HOLLAR: 1013 at the curb.

4 BZA CHAIR JORDAN: All right. So get me through this
5 shadow study. Because I'm trying to figure this thing out.
6 Who's little fencing, what's that little fencing back there?
7 Who's that?

8 (Off microphone comment)

9 BZA CHAIR JORDAN: That's your property in the rear?

10 (Off microphone comment)

11 BZA CHAIR JORDAN: What did you say? Excuse me? Is
12 your mic, turn your mic on.

13 MS. HOLLAR: Yes. The rear fence in the back, that is
14 for 1015 E Street.

15 BZA CHAIR JORDAN: That's your property, the property
16 in question?

17 MS. HOLLAR: Correct.

18 BZA CHAIR JORDAN: Okay. And so, the side yard is
19 where, on that side or the other side?

20 MS. HOLLAR: It is on the side between 1015 E Street and
21 1013. So the two buildings that are perpendicular.

22 BZA CHAIR JORDAN: Wait a minute. So is it by the
23 fencing that was --

24 MS. HOLLAR: Yes.

25 BZA CHAIR JORDAN: That was my question. Okay. I

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1 mean, I got to break it down sometime to be simple for me.
2 Okay. So, I'm trying to -- I looked at this thing, and trying
3 to understand it, what shadow's coming from where, and who's
4 casting what.

5 Because if I go from your 8:00 a.m. winter existing, then
6 I go to your 8:00 a.m. proposed, it gets lighter. I don't,
7 I mean, I don't understand this. But it's all in the shadow.
8 So there is added shadow back there. Is that correct?
9 There's added shadow?

10 MR. PHILLIPS: Yes. There's a lot of shadow, yes.

11 BZA CHAIR JORDAN: There is added shadow from your 8:00
12 a.m. existing to your 8:00 a.m. proposed winter, correct?
13 There's more shadow? Right?

14 (Off the record comments)

15 BZA CHAIR JORDAN: No. You need to just hold it. And
16 please, don't -- I see your non-verbal stuff. But please,
17 let's just refrain. Let me do what I'm doing, okay. See,
18 that's the problem I'm having. You having problems
19 interpreting your own shadow study? I'm having the same
20 problems interpreting --

21 MR. PHILLIPS: No, no.

22 BZA CHAIR JORDAN: -- interpreting your shadow study.

23 MR. PHILLIPS: We're just going to put it side by side
24 on our computer.

25 MR. KADLECEK: Yes. I think the easiest way to

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1 understand it is to look at them side by side.

2 MR. PHILLIPS: I just want to be able to explain to you.
3 Have it side by side so you can understand.

4 BZA CHAIR JORDAN: Yes. But I'm just taking it how you
5 presented it. That's kind of what I was trying to do. So,
6 if I go from 8:00 a.m. winter existing, I see an increased --
7 Is that on the east side? Is that east side? North? What
8 is that? Because the fence is on the west side side, correct?

9 MS. HOLLAR: Yes.

10 BZA CHAIR JORDAN: All right. So I see an increase on
11 the east side. That whole back portion, right? You see that?

12 MR. PHILLIPS: Okay. It's not added shadow. If you go
13 to the existing --

14 BZA CHAIR JORDAN: Yes, at 8:00 a.m. winter.

15 MR. PHILLIPS: 8:00 a.m. winter, right. It's just
16 zoomed out more. When we did it in the proposed we zoomed in
17 a little closer. Take a look. You go to 8:00 a.m. winter.

18 BZA CHAIR JORDAN: I see. But I'm talking about what
19 you're looking at. If I reduce it, it's still there. I mean,
20 that's what I'm looking at.

21 MR. PHILLIPS: But wait. What you're seeing is the
22 shadow on top is the parapet. So, 8:00 a.m., bear east.
23 Because that's the --

24 BZA CHAIR JORDAN: East, right. Okay. Up in that
25 corner, I'm going to say it's on the page, the top right corner

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1 there is sun still coming in, correct?

2 MR. PHILLIPS: Top right corner, yes.

3 BZA CHAIR JORDAN: Okay. Now we go down to the slide
4 below it, the proposed, it's shadow there.

5 MR. PHILLIPS: Sorry. That top right building is not
6 our building. Our building is --

7 BZA CHAIR JORDAN: I don't care about, talk about your
8 building casting shadows. That's what this thing is supposed
9 to present.

10 MR. PHILLIPS: Correct. But you're referencing the
11 top right corner. Our building is right here. So if you go
12 at the fence line at existing winter 8:00 a.m., to the left
13 of the fence, okay.

14 BZA CHAIR JORDAN: To the what of the fence?

15 MR. PHILLIPS: The fence.

16 BZA CHAIR JORDAN: Okay. I thought you were --

17 MR. PHILLIPS: So if you were aiming at the fence coming
18 all the way over to the building.

19 BZA CHAIR JORDAN: Okay.

20 MR. PHILLIPS: Okay? That's our property. It's in
21 red, 1015 E Street.

22 BZA CHAIR JORDAN: So, that's the problem I'm having.
23 Your shadow study doesn't designate to me what the effect your
24 building's really having. You have shadow studies of other,
25 you have shadows including the changes with other buildings

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1 in, so they're all blending.

2 MR. PHILLIPS: Right. We wanted to show what the whole
3 block was, because we had to show the effects, when we went
4 to ANC, of the entire block, to show the community, not just
5 one scene.

6 BZA CHAIR JORDAN: But looking at your shadow study, but
7 for you telling me this, I wouldn't have known where that shadow
8 was coming from, the additional shadow, correct?

9 MR. PHILLIPS: Understood, yes.

10 BZA CHAIR JORDAN: That's why I said, I was just
11 confused trying to understand this.

12 MR. PHILLIPS: I understand. We showed it in its
13 totality, not just singularly. I understand.

14 BZA CHAIR JORDAN: I hear you.

15 MR. PHILLIPS: I understand your point.

16 BZA CHAIR JORDAN: I got you. I got you. I understand
17 a little bit better now.

18 MR. PHILLIPS: Because, at the ANC meeting there was
19 more than just these three neighbors there. So we showed the
20 entire block, and how it would affect the entire block, not
21 just --

22 BZA CHAIR JORDAN: Well, I still need to know how it
23 affects the entire block. But I need to know what is the effect
24 of this property on the shadow. And what you're doing in your
25 proposed, you're blending with everything, and without

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1 designating what's your shadow.

2 So, how do I know that, besides you saying what you're
3 saying, how do I know that all this other shadow doesn't come
4 from what you're providing? I don't know if I'm making sense.
5 Does that make sense to anybody else? Well, it sounds like
6 it's okay to me, but --

7 MR. PHILLIPS: I guess what our main point is to prove
8 that with our addition, you know, that area in the back has
9 a huge shadow already. Our addition is not a huge impact.

10 BZA CHAIR JORDAN: Yes. But what is your impact?

11 MR. PHILLIPS: We're going to show you on the plan view.
12 The plan view shows, you can see our individual impact.

13 BZA CHAIR JORDAN: So we need to look at it on the wall
14 here?

15 MR. PHILLIPS: In your subset you should have the plan
16 view as well.

17 BZA CHAIR JORDAN: Plan view.

18 MR. PHILLIPS: So you can see our individual impact.

19 BZA CHAIR JORDAN: Okay. The -- No, I don't have -- Do
20 we have that? We don't have that. Do we? I didn't see it.

21 MR. PHILLIPS: You should have it. It was all part of
22 the same package of the plan view. The plan view has --

23 MS. HOLLAR: Exhibit C.

24 BZA CHAIR JORDAN: I'm sorry.

25 MS. HOLLAR: Exhibit C it looks like.

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1 BZA CHAIR JORDAN: I think I saw a resume when I went
2 to it.

3 FEMALE PARTICIPANT: Yes, I did too.

4 BZA CHAIR JORDAN: I saw a resume. It says shadow
5 study, but it's a resume. Maybe I'm wrong.

6 FEMALE PARTICIPANT: These are just the 3Ds.

7 BZA CHAIR JORDAN: Oh, it's already did it. Oh.

8 MR. PHILLIPS: 18C.

9 FEMALE PARTICIPANT: Yes, that plan isn't in there.

10 MR. KADLECEK: Yes. That plan's not in here. We'll
11 walk you through it here.

12 BZA CHAIR JORDAN: You said coming down? Stay -- Bob
13 and weave, that's what I've been trying to do, Anthony, bob
14 and weave.

15 MR. PHILLIPS: All right, so if you look on the screen,
16 sorry, look on the screen for the two summers.

17 BZA CHAIR JORDAN: Can we dim the lights please, Mr.
18 Moy? Wait a minute, let me do one other thing. Let me just
19 catch up one second, please. See, that's the problem I was
20 having. I was going through this. I went every which way,
21 and I was trying to understand what you were proposing to us.

22 And, one second. I'd rather call this up on the
23 computer so I can see it better. One second, it's about to
24 open. Oh, go ahead, because it's not opening. I'll try to
25 do the best I can looking at them.

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1 MR. PHILLIPS: Okay. Subject property is 1015 E Street
2 in red. This is existing summer at 8:00 a.m.

3 BZA CHAIR JORDAN: Well, we have a -- Oh, you're going
4 to use that instead of the red pointer? Okay. All right.

5 MR. PHILLIPS: Actually it will be easier so you could
6 -- As you see that. Then we'll go to NEI proposed. Our shadow
7 are, remember our shadows are going --

8 BZA CHAIR JORDAN: Where's the mouse?

9 MR. PHILLIPS: Right here.

10 BZA CHAIR JORDAN: Okay.

11 MR. PHILLIPS: So remember, the shadows between 8:00
12 a.m. are passing more affecting on at 8:00 a.m. to 1013, as
13 the sun goes in a southerly, you know, from east to west on
14 a southern rotation, it comes around. So the greatest impact
15 on at least from our building casting a shadow is on 1013.

16 BZA CHAIR JORDAN: Okay. So there is shadow being cast
17 on 1013. And what part of the day is this? This is summer,
18 8:00 a.m.?

19 MR. PHILLIPS: Correct.

20 BZA CHAIR JORDAN: Okay.

21 MR. PHILLIPS: This is summer, 8:00 a.m. And just a
22 record note, 1013 is also owned by our client. So the shadow's
23 being cast upon our own property.

24 BZA CHAIR JORDAN: All right. Show me the rest of the
25 year. What have we got? We're not making a lot of headway

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1 with this shadow study. All right. What is this?

2 MR. PHILLIPS: We're going to stick to the plan view,
3 since that was easier for you to understand what our shadow's
4 casting on.

5 BZA CHAIR JORDAN: I'm just trying to understand. I'm
6 really --

7 MR. PHILLIPS: Right.

8 BZA CHAIR JORDAN: -- getting ready to throw my hands
9 up. Because I just can't follow this.

10 MR. PHILLIPS: Yes. We, like I said, we did the whole
11 block for the shadow study to show the impact on the entire
12 block, because everyone asked how it would impact. So the plan
13 view would be actually, to see our individual shadow of the
14 building.

15 BZA CHAIR JORDAN: Okay.

16 (Off the record comments)

17 MR. PHILLIPS: All right. So this is existing winter
18 at 12:00 p.m. As the sun rotates.

19 BZA CHAIR JORDAN: All right. And where is your --
20 Okay.

21 MR. PHILLIPS: Here's our fence again.

22 BZA CHAIR JORDAN: That's your fence. That fence is
23 what your western, your eastern border?

24 MR. KADLECEK: Southern.

25 MR. PHILLIPS: Southern.

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1 BZA CHAIR JORDAN: Southern border. But it's on --

2 MR. PHILLIPS: Southern and western.

3 BZA CHAIR JORDAN: Yes, okay. All right.

4 MR. PHILLIPS: The fence is on the affected side, which
5 is the side yard side.

6 BZA CHAIR JORDAN: Okay. Now let's look at proposed.
7 Still can't see --

8 (Off the record comments)

9 MR. PHILLIPS: Here's winter. Our fence coming
10 around, and then our building.

11 BZA CHAIR JORDAN: But I still can't --

12 MR. PHILLIPS: Right. We get -- Because remember the
13 sun, at that time the shadows are going more forward. So our
14 basic casting is really on 1013, or actually going more forward
15 at 12:00 noon. Since the back of it is dead south, it's all
16 going forward. So you come forward you'll see this shadow
17 won't change at all. Because we're not changing the front or
18 adding any height to the existing front.

19 BZA CHAIR JORDAN: All right. So let's go back to the
20 previous slide, the existing.

21 MR. PHILLIPS: The same.

22 BZA CHAIR JORDAN: All right. But I'm also, as we're
23 sitting here looking at the impact upon the properties at 503,
24 505 11th Street also, with the building coming in the back as
25 you extend your non-conforming side yard.

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1 Okay. All right. I don't know if I continue to
2 understand this shadow study. I just think it's not presented
3 well, the way that we're used to seeing these things. But
4 that's neither here nor there.

5 MR. KADLECEK: If I may, I suspect some of your
6 confusion is that what the shadows studies show is that there
7 really is very little, if at all difference between the
8 proposed and the current condition. Because the current
9 condition --

10 BZA CHAIR JORDAN: I think my problem is that I'm not
11 really able to tell what is the impact and what's not the
12 impact. Because we've done a broad scope, even with the other.
13 And it's hard to follow you guys completely leaving the screen
14 and going to another screen. So we have the side by side
15 comparison. That's my problem. I don't know if the Board,
16 anybody else --

17 VICE CHAIRPERSON HEATH: So you've shown noon in the
18 winter time. But I think the bigger impact, it appears to me
19 would be at, in the afternoon.

20 MR. PHILLIPS: Correct. For those particular
21 property. For 503 --

22 VICE CHAIRPERSON HEATH: For the properties that we're
23 talking about.

24 MR. PHILLIPS: Right.

25 VICE CHAIRPERSON HEATH: So, can you walk us through

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1 your 6:00 p.m. shadow study?

2 MR. PHILLIPS: Sure.

3 (Off the record comments)

4 BZA CHAIR JORDAN: So this is supposed to be what? You
5 say in summer? Summer?

6 MR. PHILLIPS: Okay. Here's the 6:00 p.m., which would
7 impact. So here's the existing 6:00 p.m. summer. Because
8 remember there's existing building, or a small one story
9 addition in the rear of 1015 already.

10 And then actually, you can see at 6:00 p.m. summer
11 there's a complete, their both back yards are already
12 completely in shadow. And here's the 6:00 p.m. proposed. Now
13 we're casting more of a shadow over 507 11th Street with the
14 rear addition.

15 BZA CHAIR JORDAN: Okay.

16 MR. KADLECEK: One thing to keep in mind is this has sort
17 of deviated a little bit from the original discussion about
18 the impact of the side yard relief on the west. Whether we
19 have a side yard that is zero or two feet, or six feet on the
20 western side, the shadow cast to the east is going to be the
21 same. So it's not really --

22 BZA CHAIR JORDAN: You're extending the length of the
23 building, right?

24 MR. KADLECEK: Correct. But we're not asking for rear
25 yard relief. In fact, the rear yard is three times as big as

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1 --

2 BZA CHAIR JORDAN: I don't care. You're extending the
3 length of the building. And it's still, you're extending the
4 non conformity. Isn't that what you're asking to request, to
5 extend the non conformity?

6 MR. KADLECEK: On the western side, yes.

7 BZA CHAIR JORDAN: Okay. Thank you. And I hear you.
8 But let us -- Okay. All right. The lights, Mr. Moy. All
9 right. Now, we have this -- I said to Mr. Ford that he can
10 come back to his shadow study once we looked at this. And I
11 cut off your statement. You want to show us your shadow,
12 please?

13 MR. FORD: Sure. You have copies of it up there?

14 BZA CHAIR JORDAN: Which one is what?

15 MR. FORD: It's the --

16 BZA CHAIR JORDAN: That's the one I was thinking, yes.

17 MR. FORD: What I did for this was I picked a
18 southeasterly perspective, rather than a northerly
19 perspective, because that's actually in the sun path. So you
20 can see what the sun does.

21 I didn't do the a.m. studies, because the sun doesn't
22 show on the western side of their building or our building until
23 post median, post meridian. So the a.m. studies are
24 irrelevant, because we have sun on the front. And of course
25 they have sun on the back, which turns it into a heat sink.

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1 I chose, originally I chose the equinoxes and the
2 solstices as my dates. So you have March 21st. And I centered
3 around what I considered the critical three hours before
4 sunset, because that's when you're going to get the maximum
5 shadow.

6 If you look on March 21st, 5:00 p.m., you will see that
7 with the building, proposed building in place, that there is
8 shadow cast up on the back. Neil's building is the yellow one,
9 mine is the pink. And I included the doors and windows so that
10 you could see the effect on light coming into the building
11 through the windows and the doors. The other shadow didn't
12 have those details.

13 BZA CHAIR JORDAN: Right. I see it. Okay.

14 MR. FORD: So you can see on the 5:00 p.m. that with the
15 proposed building Neil has lost his first floor daylight. And
16 at 6:00 p.m. he's lost his --

17 BZA CHAIR JORDAN: I can understand this.

18 MR. FORD: Okay. And also too, if you see the dog legs,
19 you can see the effect of the light up on the dog legs too,
20 Neil's side windows. If you go to July 4th, I did kind of do
21 a little shift --

22 BZA CHAIR JORDAN: Are you saying July 4th at 7:00 p.m.
23 this is all coming from this addition?

24 MR. FORD: Yes, sir. That's it. This is tight. This
25 is very, very tight. I've gone over this a million times. And

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1 my files, if anybody wants to take a look at how it's done,
2 I'll make them available to them so that they can study it.

3 If you look at 7:00 p.m. you'll see the effect there.
4 And that also takes the light from Janet's place. July 4th
5 then, I found that doing the equinox, vernal equinox is exactly
6 the same as the autumnal equinox, so I offset it a month, which
7 actually makes April an equivalent working the other way. And
8 if you see in October 31st that, especially in the 4:00 p.m.
9 and 5:00 p.m., there is massive sun loss.

10 And of course we're talking about air. Because the
11 prevailing breezes are westerly. And this totally seals off
12 our back yards from any kind of air. I don't have central air
13 conditioning right now. I open my windows, I put on ceiling
14 fans, and I have a breeze most of the summer, which will be
15 gone.

16 Moving on to December 25th, especially at 5:00 p.m. you
17 can see massive changes. And actually all, because the sun
18 is so low, the ascension is quite low during December that the
19 shadows are quite, well, you can see 4:00 p.m. again we're
20 losing, Neil loses his lower light. And then by 5:00 p.m. he's
21 lost his upper story light. And of course, this dog leg in
22 here, his side lights, his side rooms, his bathroom, his living
23 room --

24 BZA CHAIR JORDAN: Okay.

25 MR. FORD: -- his workshop.

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1 BZA CHAIR JORDAN: Okay. I got you. I can read this.
2 Let me do one thing. I'm going to give the applicant the
3 opportunity to ask questions of Mr. Ford regarding the sun
4 setting.

5 MR. FORD: Okay. And then last --

6 BZA CHAIR JORDAN: No, no. We're good. We're good.
7 I can understand what you got here. I think yours is real
8 clear. Now I'm going to give them the opportunity to ask you
9 questions. I got you.

10 MR. FORD: All right, sir.

11 BZA CHAIR JORDAN: And I want to enter it, be sure we
12 put this as an exhibit number please, Mr. Moy. Where are we,
13 Exhibit --

14 MR. MOY: Just double check. Yes, 38.

15 BZA CHAIR JORDAN: So this packet of shadow studies from
16 Mr. Ford would be 38. The pictures, so 38 A, B, and C, the
17 set that we received, okay.

18 MR. FORD: All right.

19 BZA CHAIR JORDAN: All right. Cross examination. Any
20 questions you'd like to ask about the --

21 MR. KADLECEK: Sure, just a couple. Mr. Ford, who
22 prepared this sun study?

23 MR. FORD: I did.

24 MR. KADLECEK: And do you have any background or
25 expertise in --

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1 MR. FORD: Oh, yes.

2 MR. KADLECEK: -- architecture?

3 MR. FORD: Yes, I -- No, not architecture, but
4 navigation. I used to go out with a sexton and shoot new sites
5 for positioning ships. We're also a major animation company.
6 We deal with --

7 BZA CHAIR JORDAN: Who's we? Who's we?

8 MR. FORD: Oh, Yellowcap Productions. That's my
9 company that's located at --

10 BZA CHAIR JORDAN: And what do you do there?

11 MR. FORD: Video production, 3D animation, 2D
12 animation, post production, web sites.

13 BZA CHAIR JORDAN: And what did you use to generate
14 these?

15 MR. FORD: SketchUp. Yes, it's the standard.

16 BZA CHAIR JORDAN: Okay.

17 MR. FORD: Easy program. Basic.

18 MR. KADLECEK: And did you use the accurate building
19 plans for the proposed project?

20 MR. FORD: I used some of yours, but we also did
21 measurements. We also actually went out there with a 50 foot
22 tape measure, and got -- Like I say, this is tight. There's
23 no room for -- And any erring I did was on the minus side, rather
24 than the additional side.

25 MR. KADLECEK: Do you know the distance between your

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1 rear property line and the rear of your house?

2 MR. FORD: Yes, I do. But I don't have it with my
3 unfortunately. I do, it's on the plans.

4 MR. KADLECEK: Would it be accurate to say it's more
5 than 20 feet?

6 MR. FORD: Yes.

7 MR. KADLECEK: Okay. And looking at your December 25th
8 study, you show a shadow and sun being shown at 5:00 p.m. on
9 December 25th. Doesn't the sun set before 5 o'clock on
10 December 25th?

11 MR. FORD: It's still there. It's still there. At
12 that point you're in what's called nautical twilight, if you
13 know that term, civil twilight, nautical twilight.

14 MR. KADLECEK: Okay. Do you have anything that can
15 demonstrate that?

16 MR. FORD: I can show --

17 BZA CHAIR JORDAN: What do you mean does he have
18 anything that can demonstrate that?

19 MR. KADLECEK: Well, I mean, it's his word is saying
20 that it sets at --

21 BZA CHAIR JORDAN: And if he provides you an answer, and
22 if you have something to the contrary, then you demonstrate
23 it.

24 MR. KADLECEK: Right, right. We can --

25 BZA CHAIR JORDAN: So you'll do that in rebuttal?

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1 MR. KADLECEK: Yes.

2 BZA CHAIR JORDAN: Okay. Your next question.

3 MR. KADLECEK: My next question -- Am I just with Mr.
4 Ford, or can I ask Mr. Rhodes as well a question?

5 BZA CHAIR JORDAN: Go ahead.

6 MR. KADLECEK: Okay. For Mr. Rhodes. The photograph
7 that you provided, the rendering, what was the perspective of
8 the proposed? Where would that person have been standing if
9 they were looking at that wall?

10 BZA CHAIR JORDAN: I'm sorry. Let's be sure you're on
11 the microphone.

12 MR. RHODES: I was as far back at each property. I
13 stood against the wall of the property. And I will --

14 BZA CHAIR JORDAN: Excuse me. Let me stop you a second.
15 What photo are you referencing?

16 MR. KADLECEK: The photo that he presented about what
17 the condition would look like from his property.

18 BZA CHAIR JORDAN: Oh, you're talking about, okay.

19 MR. KADLECEK: It's a --

20 BZA CHAIR JORDAN: I just want to make sure we have a
21 clear record here. And we can't -- So, that's the one that's
22 showing the wall from your back yard or side yard? Okay.

23 MR. RHODES: In my testimony I said I was as far back
24 as possible from the wall. That's in the testimony.

25 MR. KADLECEK: And what would that distance be?

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1 MR. RHODES: I think this is about 20. Michael Ford's
2 property is a little less. Yes, his is, Mike's property is
3 maybe a couple of feet more than his.

4 MR. KADLECEK: Okay. So, it's your position that being
5 more than 20 feet obscures your entire view in that picture
6 for a 23 foot wall?

7 MR. RHODES: It's about light and air.

8 MR. KADLECEK: Okay. So my next question is --

9 MR. RHODES: I don't think view is an issue here.
10 Certainly --

11 MR. KADLECEK: Sorry. My next question if, if this
12 project had a conforming western side yard how would that
13 change the condition that your properties see?

14 (Off the record comments)

15 MR. RHODES: Oh, and may I point out --

16 BZA CHAIR JORDAN: No, no, no. No, you can't here.
17 You're answering questions.

18 MR. KADLECEK: We have no further questions.

19 BZA CHAIR JORDAN: All right. All right. Thank you.
20 Thank you all. Any rebuttal?

21 MR. KADLECEK: Yes. We do have a couple of points of
22 rebuttal. The first is what I alluded to in my last question.
23 That is, the western side yard, the look of the wall from the
24 perspective of these neighbors would be the same if we provided
25 a conforming side yard, which is either six feet or zero feet.

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1 Now --

2 BZA CHAIR JORDAN: Doesn't that change because you're
3 extending the non conformity, and making the building longer
4 than what's already existing?

5 MR. KADLECEK: Yes. But we're talking about the side
6 yard. So, the building could go as far back as it is now as
7 a matter of right.

8 BZA CHAIR JORDAN: Okay.

9 MR. KADLECEK: The building is provide -- The lot's 120
10 feet deep. This building only goes a portion of that. But
11 the provided rear yard is like 44 feet. It's three times
12 what's required in this zone. The other thing that I want the
13 Board to keep --

14 BZA CHAIR JORDAN: So the side yard is not including --
15 Your extending the side yard does not include the addition?
16 Is that what you're saying?

17 MR. KADLECEK: That's not what I'm saying. I'm saying
18 the side yard is maintaining the same width for the addition
19 as it is on the existing building.

20 BZA CHAIR JORDAN: Right.

21 MR. KADLECEK: However, the addition --

22 BZA CHAIR JORDAN: But you're extending the non
23 conformity.

24 MR. KADLECEK: We are extending the non conformity.
25 But we're extending the side yard. We're not creating

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1 anything new. We're not creating --

2 BZA CHAIR JORDAN: I got you. I understand.

3 MR. KADLECEK: -- you know, any other sort of condition.

4 BZA CHAIR JORDAN: I understand.

5 MR. KADLECEK: So, when you step back and look at this
6 project, I think what's important to keep in mind is it's
7 significantly below what the matter of right zoning allows
8 here. It's well below the height, which is permitted at 50
9 feet. It's significantly below FAR, which is 2.5. The
10 proposed is 1.05. The lot occupancy is below what's
11 permitted. And the rear yard is three times as long.

12 So, I think this discussion about having these adverse
13 impacts on light and air just don't really carry a lot of weight
14 when you're talking about a building that's significantly less
15 than the matter of right condition permits.

16 The other thing to keep in mind, as I was starting to
17 say at the beginning is, we're asking for relief for a western
18 side yard. And the impacts that we should focusing on are the
19 western side yard impacts. The wall can be built to the
20 eastern property line as a matter of right, no matter what we're
21 doing on the western side. The C2A condition allows a zero
22 lot line to lot line addition in construction.

23 The neighbors have raised a couple of points about
24 trees, about emergency access, and so forth. And it's not that
25 the developer's insensitive, or doesn't hear those concerns.

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1 But I think, as the Chair knows, and as the remainder of the
2 Board also knows, those aren't really zoning considerations.
3 And furthermore, if you look --

4 BZA CHAIR JORDAN: What's not zoning considerations?
5 I'm sorry.

6 MR. KADLECEK: The trees and access across, to the rear
7 alley. The trees, those are not a zoning impact. And
8 furthermore, the report actually states, particularly with
9 respect to the tree on Mr. Rhodes property that there's really
10 no impact on his tree from this proposed project.

11 With respect to access to the alleys, whether people can
12 cross, you know, cross over somebody else's property is
13 certainly not a zoning issue. Now, that's not to say Mr. Athey
14 isn't willing to work with the neighbors to try and figure out
15 a solution. Because he is willing to work with them to
16 hopefully find a solution with respect to that.

17 But effectively, them crossing into the alley is
18 trespassing. I mean, they're walking over somebody else's
19 property that they don't own, and don't have the right to.
20 There are plenty of other properties in this square, even at
21 the south side of this square, that are the exact same
22 condition, where the rear yard of those buildings abut the side
23 yards of other buildings. They don't have access to the alley.
24 It's a common condition in the District. So --

25 VICE CHAIRPERSON HEATH: Question for you --

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1 MR. KADLECEK: Sure.

2 VICE CHAIRPERSON HEATH: -- along this point. Because
3 one of my bigger concerns is egress --

4 MR. KADLECEK: Sure.

5 VICE CHAIRPERSON HEATH: -- for these neighbors. And
6 so, if you were to, if you build up -- That's the east side,
7 right?

8 MR. KADLECEK: Yes.

9 VICE CHAIRPERSON HEATH: So if you build up to the east,
10 how would you propose that they have a second means of egress
11 from their home?

12 MR. PHILLIPS: They're single family. And under
13 single family they're one means of egress. Because they don't
14 open up onto a public right of way they can never consider their
15 rear as egress, as far as code.

16 MR. KADLECEK: Right. That's the thing to keep in
17 mind. Their access to the alley is across somebody else's
18 property. That's not a means of egress. They don't have
19 direct connection. None of these properties that front on
20 11th Street have a, at least that we're talking about here,
21 have a direct adjoining property line to an alley.

22 Their property line adjoins another property. And I
23 don't think there's any building code or zoning code, or
24 otherwise that would say that crossing somebody else's
25 property is a legal means of egress.

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1 VICE CHAIRPERSON HEATH: Okay.

2 BZA CHAIR JORDAN: Anything else you want to do in
3 rebuttal?

4 MR. KADLECEK: Yes. So with that I'll just let Mr.
5 Athey finish up one last point. And we have nothing further.
6 Thank you.

7 MR. ATHEY: The one final point I'd like to make is, I'm
8 really not insensitive to their concerns. In fact, I've
9 offered to meet with them on numerous occasions. I have a
10 stack of emails and highlights where I've offered over and over
11 and over and over and over to meet in person to talk about this.
12 And they've been unwilling to meet with me to date.

13 And so, you know, for me the request that we are seeking
14 is to, we're trying to comply with the wishes of Historic
15 Preservation Office on the west side of the property, and just
16 extend an existing historic condition. I'm very sensitive to
17 their concerns.

18 I don't want to build a project, you know, and fight with
19 the neighbors the whole time, you know, that's not my interest
20 at all. I've tried many, many times to meet with them, and
21 they haven't been willing to engage with me. So, that's kind
22 of where I am.

23 MR. KADLECEK: And on that point, one of the concerns
24 that we did hear from them was the appearance of this wall.
25 And I know Mr. Athey is more than willing to try and work with

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1 them to address the wall, to put a greenscreen on it, to do
2 something that would lessen the impact.

3 I mean, one of the impacts they talked about was the
4 reflection. Well, and easy solution to that is putting a
5 greenscreen on, which Mr. Athey has offered, and is more than
6 willing to do. And we believe there is some common ground
7 here, but if we can't get the dialogue going it's hard to reach
8 a common ground, as you probably know.

9 BZA CHAIR JORDAN: All right. Then we will close the
10 record.

11 ZC CHAIR HOOD: Chairman --

12 BZA CHAIR JORDAN: Before we do that, one thing before
13 that, Mr. Hood. Gary Peterson from the Capitol Hill
14 Restoration Society was here and was waiting, but could not
15 stay, but he left his testimony, which will be part of the
16 record. Mr. Hood.

17 ZC CHAIR HOOD: Yes. I just, Mr. Kadlecsek said, is
18 saying it wasn't a zoning issue. Also, zoning consists of
19 protecting the safety and the health of the residents of the
20 city. So, I just want you to know, that's part of zoning.
21 Okay. All right. Thank you, Mr. Chairman.

22 BZA CHAIR JORDAN: So then, we will close the record at
23 this point in this matter. Is the Board ready to deliberate
24 in this case? Do you need some time? They need some time?
25 Okay, yes. Mr. Hinkle.

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1 MEMBER HINKLE: Yes. If you may, could I just ask the
2 applicant one question?

3 BZA CHAIR JORDAN: Sure.

4 MEMBER HINKLE: Regardless of what was discussed at the
5 HPRB meeting, have you considered pushing the addition to the
6 west the two feet and two inches, or what have you, which would
7 kind of at least give a little bit of room, a little bit of
8 space to the properties to the east? Mr. Chairman, I began
9 here. Right. I'm sorry. Go ahead.

10 MR. PHILLIPS: Yes. Just, if I may, I guess what's also
11 being lost here is, it's a double edged sword. The zoning
12 administrator has given an order that any side yard -- Because
13 the Board, BZA, has asked, any side yard less than five feet
14 be maintained, and not to enclose it

15 We've had this same issue on the current project we have
16 now. Now, we can send a letter over to you from his order.
17 So, we would be back here. Because to enclose the side yard,
18 because it's like 24 inches less than five feet, we would have
19 to ask BZA to enclose the side yard. So, the circumstances
20 surrounding that, you know --

21 MEMBER HINKLE: Sure.

22 MR. PHILLIPS: We could.

23 MEMBER HINKLE: That's understood. But you're here
24 now.

25 MR. PHILLIPS: Right, right.

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1 MEMBER HINKLE: I just thought I'd ask the question.

2 MR. PHILLIPS: So it's both. So, we are now asking for
3 the relief, because it is hardship. Because you have an order
4 saying you can't enclose it, and you have HPR saying, asked
5 us to open it.

6 BZA CHAIR JORDAN: Who had an order? You said this
7 Board gave an order to keep --

8 MR. PHILLIPS: Correct, yes. There was a, and we'll
9 send you over -- There's a, because we're having a project
10 right now with this issue, where we have to maintain an existing
11 side yard because it's less five feet. And we can send it over
12 to you. This is zoning.

13 BZA CHAIR JORDAN: This Board wouldn't set out a --

14 MR. PHILLIPS: I will send you over the zoning
15 administrator, because there were a couple of cases where they
16 were trying to close or open a side yard.

17 BZA CHAIR JORDAN: We take every case as an individual
18 basis, as they stand on their own merits. Now, there may have
19 been a case where we might have said something in regards to
20 mediation. But we don't set the rules, the Zoning Commission
21 sets the rules. So, I just want to make sure. Yes, okay.

22 MEMBER HINKLE: Yes. For me it just seems like if you
23 push the whole addition up you could open that light well, you
24 know. Then you have that two foot passageway ending into the
25 light well. And you give a little bit of relief to the

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1 neighbors to the east. Sorry, you know, I don't mean to design
2 your whole project.

3 MR. KADLECEK: And I'm actually --

4 MEMBER HINKLE: I was just --

5 MR. KADLECEK: I don't think we're quite following what
6 your question is.

7 MR. ATHEY: Mr. Hinkle, could I ask you to just clarify
8 your question. I want to make sure everybody's clear here.
9 Because I think there might be a little bit of confusion. I'm
10 sorry.

11 MEMBER HINKLE: Sure. You have a historic structure,
12 and then you have an addition. And I was just curious if you
13 looked at pushing the addition into that two feet two inches
14 that HPRB asked you to retain.

15 MR. ATHEY: So are you saying --

16 MEMBER HINKLE: So, shift the whole addition.

17 MR. ATHEY: So, shift it from east to west? Is that
18 what you're saying?

19 MEMBER HINKLE: Right.

20 MR. ATHEY: Or entirely close off --

21 MEMBER HINKLE: East to west. So that gives you, you
22 know, another two feet on the east side, which, you know,
23 provides a little bit extra space for the neighbors to the east.

24 MR. ATHEY: Right. I mean, I think, and someone that's
25 part of the applicant team correct me if I'm wrong. I think

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1 the problem is that HPRB wants the side yard on the western
2 side maintained as the historic condition.

3 I think that if the addition were shifted to the west
4 it closes off the side yard. And while it might, you know,
5 it might be a slight benefit to the neighbors to the east, I
6 can't imagine that HPRB would, it would A, create a
7 non-conforming condition still.

8 MEMBER HINKLE: Right.

9 MR. ATHEY: So we'd still have to get relief.

10 MEMBER HINKLE: You would still have relief.
11 Absolutely.

12 MR. ATHEY: And then also, we're abutting up against
13 what HPRB wants. So it almost makes it worse.

14 MEMBER HINKLE: Yes. I just wondered if you explored
15 something.

16 MR. KADLECEK: And to be candid, there were additional
17 alternatives that were explored, that -- I'll let Brian explain
18 that a little bit more.

19 MR. ATHEY: The original project, just so you know, we
20 were sensitive to the neighbors' concerns. And so we had
21 proposed doing a modest addition on the existing main block,
22 and then doing a carriage house in the rear of the property
23 connecting the two structures, which would have provided,
24 which would have opened up the back of Mr. Ford and Mr. Rhodes'
25 property. But they vehemently opposed that project, you know,

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1 without having direct consultation, other than through the
2 public process. So we're a little bit in sort of a pickle.

3 MEMBER HINKLE: And you're here with this project.

4 MR. ATHEY: Correct. I just wanted to provide clarity,
5 just so that everyone's clear. I've been trying to work with
6 what I'm dealing, with the neighbors here.

7 MEMBER HINKLE: Okay. Thank you.

8 BZA CHAIR JORDAN: All right. So we can close the
9 record on this case. Is the Board ready to deliberate on this,
10 or anything, or not go forward? I mean, I just, I believe that
11 even with what we've been requested as a variance, a variance
12 relief from a non-conforming side yard, and extending that side
13 yard.

14 The side yard requirement's 775.3, and then a request
15 to, for the variance of 2001.3, extending a non-conforming.
16 I just think that if the extension is non-conforming,
17 regardless of its impact, that side yard is on the west side
18 of the property.

19 By extending and agreeing it's going to have impact on
20 the community, I believe that I was not convinced. And I don't
21 find credible the shadow study presented by the applicant. I
22 find credible the shadow study provided by the community in
23 regards to this. I forgot the exhibit number we give it.

24 I think that there is some, even though we've been trying
25 to be hammered by the appellant, that we just need to look on

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1 the west side of the building, because that's where the
2 non-conforming side yard is, the ultimate fact is that it's
3 going, by doing that it has effect upon all the property. And
4 on the property it has effect upon the condition of the west
5 side of the building. And one thing leads to something else.

6 So I think that there's substantial impact by doing this
7 extension if we were to extend this side yard as it is. And
8 this body is not bound by the suggestion by HPRB. And it wasn't
9 even ordered, it was a suggestion. I don't even see how we're
10 hitting the test. That's my thought on it. Anybody? Yes.

11 VICE CHAIRPERSON HEATH: I agree with you, Mr.
12 Chairman. I'm really concerned about the impact on the
13 neighbors. And I can't accept this request for variance. If
14 there was some alternative that the applicant was willing to
15 offer that would reach some compromise between what you're
16 trying to do and what your neighbors are concerned about, then
17 perhaps. But at this point I just don't see a way that I can
18 approve this, because of the impact.

19 MEMBER HINKLE: Yes. I tend to disagree a bit. I
20 think, because there is no side yard requirement, you know,
21 it bothers me that the building, the proposed building is up
22 against the back yards. But, you know, if it wasn't for HPRB
23 making the suggestion, you know, they wouldn't have to be here
24 in front of us. So I'm supportive of the request, to be honest.

25 BZA CHAIR JORDAN: Well, I would move that we -- I mean,

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1 just don't know. Well, my motion is that we deny the request.
2 Unless, Mr. --

3 ZC CHAIR HOOD: I would second that. And I go along
4 with Vice Chair Heath. I think she articulated, and I don't
5 need to repeat it. I agree with her sentiments exactly. And
6 I'll second that motion.

7 BZA CHAIR JORDAN: All right. All those in favor --

8 ZC CHAIR HOOD: But let me just say this. In that
9 motion she said if there was some alternative worked out. So,
10 I want to make sure that's part of what you mentioned. I could
11 go along with that. So, you know, but if you want to carry
12 the motion, I just giving us, the applicant a strong signal,
13 that she said if there's some alternative. But there's a
14 motion on the table, Mr. Chairman, if you want to --

15 BZA CHAIR JORDAN: I hear you, and I understand. I got
16 your read. And I got Mr. Hinkle's too. So, is there a --

17 MR. KADLECEK: If we were able to provide an
18 alternative, is that something the Board were to consider?
19 And I can't guarantee that we can, but if we were able to provide
20 one?

21 BZA CHAIR JORDAN: Ask me to continue it before we put
22 the hammer on it.

23 MR. KADLECEK: Yes. That, we'd really --

24 BZA CHAIR JORDAN: Mr. Hinkle had made some suggestions
25 to you. And you guys didn't accept it.

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1 MR. KADLECEK: Right. I mean --

2 BZA CHAIR JORDAN: The neighbors have been sitting
3 here. We're going to carry this over to June 13th for a --
4 And I'll, pull back your second, pull back my motion.

5 ZC CHAIR HOOD: Pull back my second. And I would just
6 encourage, Mr. Chairman, that the neighbors agree to meet.
7 Because we hear that there's some issues.

8 BZA CHAIR JORDAN: We need to make sure that -- And so
9 everybody understands, it's better that you work it out, at
10 least some viable alternatives working collectively, than for
11 us to make that decision. Even though we may have given some
12 indication, it doesn't mean that if we don't see good faith
13 that we're not doing what have you. So we will carry this to
14 -- How are we looking on the 13th? I know we're stacking up
15 on the 13th.

16 MR. MOY: No, we're, well we have two days where Mr. Hood
17 could participate, June 16 and June 30th.

18 BZA CHAIR JORDAN: Well, which ones are good? How are
19 we looking on the 16th?

20 MR. MOY: Excellent.

21 BZA CHAIR JORDAN: Oh, then June 16th.

22 MR. MOY: Yes. The 13th of June.

23 MR. FORD: I'll be out of --

24 BZA CHAIR JORDAN: You return back on June 13th?

25 MR. FORD: I return from West Africa on an architectural

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1 project on the 13th of June.

2 BZA CHAIR JORDAN: Well, we're going to hold this on the
3 16th.

4 MR. FORD: Well, if I need to talk to these guys --

5 BZA CHAIR JORDAN: Yes, it sounds like it.

6 MR. FORD: That's, I'll be, I won't be here. That makes
7 it difficult.

8 BZA CHAIR JORDAN: Then let's --

9 MR. FORD: Can we -- Sorry, just one thing. Can we get
10 an agreement from you all that you will agree to meet with us?

11 BZA CHAIR JORDAN: Well, hold on, hold on. How bad is
12 the 30th? But he's going to be out, and Mr. Rhodes --

13 ZC CHAIR HOOD: Be back though.

14 BZA CHAIR JORDAN: Yes. But he's going to be back.
15 Why can't you make the 16th if you're going to be back --

16 ZC CHAIR HOOD: Might need some time, if he's coming --

17 MR. FORD: Because there's, I'll be gone before that.
18 I'm leaving the end of this month. And so, if there's
19 discussions --

20 VICE CHAIRPERSON HEATH: They can meet now.

21 BZA CHAIR JORDAN: Oh, well you guys, they can have
22 conversation. When are you leaving?

23 MR. FORD: The 27th.

24 BZA CHAIR JORDAN: They need to have conversations, you
25 know --

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1 MR. KADLECEK: We can meet --

2 BZA CHAIR JORDAN: That's not a protracted kind of deal.
3 This shouldn't be a whole bunch of that, okay. So June 16th
4 is where we're going to move this. You need to get something
5 to us in our record by June 9th. And then we'll put this down
6 for a decision/if we need to get some testimony. But right
7 now it's down for decision, right?

8 MR. KADLECEK: Okay.

9 BZA CHAIR JORDAN: All right. Real good. Thank you.
10 Thank you all. Thank you so very much. Appreciate it.

11 MR. KADLECEK: Thank you for your time.

12 BZA CHAIR JORDAN: Anything else coming before the
13 Board?

14 MR. MOY: Not from the staff, sir.

15 ZC CHAIR HOOD: Mr. Chairman, I would hope that with the
16 85 degree weather that the Board of Zoning Adjustment --

17 BZA CHAIR JORDAN: Oh, thank you, thank you, thank you.
18 No, no, this has nothing to do with you. For the record, we
19 normally go into our relaxed dress for the warmer weather. So
20 we leave it up to Board Members, depending on their day, or
21 what they want to wear to stay comfortable.

22 We follow our, the lead of the Zoning Commission. And
23 so that's, unless there is some opposition, that would be our
24 order, okay? Okay. Just no tank tops and shorts, and no
25 bikini, and no swim suits.

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1 (Whereupon, the hearing in the above-entitled matter
2 was concluded at 1:38 p.m.)
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