

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 30, 2015

+ + + + +

The Regular Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd J. Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD J. JORDAN, Chairperson
MARNIQUE Y. HEATH, Vice Chairman

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Commission Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LAWRENCE FERRIS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT
STEPHEN GYOR
STEPHEN MORDFIN
JOHN NYARKU

The transcript constitutes the minutes from the Public Meeting held on June 30, 2015

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TABLE OF CONTENTS

ITEM	PAGE
Call to Order	4
<u>Appeal of Application No. 19029</u>	5
Application of Eric Piersma (Postponed until July 7 th)	
<u>Appeal of Application No. 18911</u>	6
Appeal of John A. Stokes (Continued until September 2015 vote)	
<u>Appeal No. 19027</u>	11
Appeal of Rima Calderon and William Sawicki Appeal pursuant to 11 DCMR 3100 and 3101, from a March 19, 2015 decision by the Zoning Administrator, DCRA, to issue Building Permit No. B1504436, to renovate a hotel in the DC/R-5-D District at premises 1731 New Hampshire Avenue, NW (Square 154, Lot 829)	
Presentation by Katherine Gresham	33
Statement of William Sawicki	58
Statement of Rima Calderon	65
Statement of Zoning Administrator LeGrant	68
Statement of Maximilian Tondro, DCRA	74
Presentation of Mr. P. Evans, Esq	78
Statement of M. Wexler, CS Bond Street	81
Rebuttal by Appellant:	
Ms. Calderon	97
Ms. Sawicki	99
(Vote postponed to September 15, 2015)	
<u>Application No. 19034</u>	103
Application of Industrial Bank of Washington For the Bank: Ms. Johnson and Mr. Mitchell	105
Office of Planning: Mr. Mordfin	114
Ms. Sullivan, ANC 1B	119
Questions by Application of ANC	132
Parties in Opposition:	
Neil Boertlein	135
<u>Application No. 19025</u>	146
Application of Perseus 1827 Adams Mill Investments LLC Request pursuant to 11 DCMR 3104.1, for a special exception from the prepared food shop requirements under 712 and 712.3(t), to show a prepared food shop with greater than 18 seats in the C-2-A District at premises 1827 Adams Mill Road,	

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NW (a/k/a 1794 Lanier Place, NW) (Square 2580, Lot 521
 Mr. Schwendinger, Mr. Collins, Ms. Bloomfield,
 Mr. Grey 146
 Presentation by Office of Planning:
 Ms. Elliott 147
 Vote 149

APPLICATION NO. 18906 150
 Application of Endeka Enterprises
 and 1320 Penelope LLC
 Request pursuant to 11 DCMR 3103.2 and 3014.1, for a variance
 from the parking requirements under 2101.1, and a special
 exception from the roof structure setback requirements under
 400.7(b), 411.11, and 777.1, to allow construction of a
 residential addition to an existing office building in the
 DC/SP-1 and C-3-C Districts at premises 1337 Connecticut
 Avenue, NW (Square 137, Lot 55)
 Office of Planning Mr. Gyor 155
 Vote 158

APPLICATION NO. 18985 158
 Application of David Benson. Request pursuant to 11 DCMR
 3103.2, for variances from the minimum lot area requirements
 under 401.3, the lot occupancy requirements under 403.2, and
 the rear yard requirements under 404.1, to convert a flat into
 a three-unit apartment house in the R-4 District at premises
 2701 11th Street, NW (Square 2858, Lot 16)
 David Benson, Applicant 159
 William Couch, architect 161
 Office of Planning: Mr. Gyor 165

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

(9:50 a.m.)

CHAIRPERSON JORDAN: Good morning. If we all can come to order. We're here for the meeting of the Board of Zoning Adjustment for the District of Columbia. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W. Today's date is June 30th, 2015.

My name is Lloyd Jordan, Chairperson of the Board. To my right is Anthony Hood, Chairman of the Zoning Commission, sitting in as a member of the Board of Zoning Adjustment today, and to my left is Vice Chair Monique Heath. Today's proceedings are being webcast live, and also being recorded by a court reporter, so therefore I'm going to ask you to refrain from any disruptive noises here in the hearing room. It's a good time now to check and make sure that any device that may buzz or ring is silenced.

If you're going to provide any testimony, read any statement, read a letter, or address the Board in any manner, we're going to need you to do two things. If you're going to address the Board, in any manner, by testimony, by reading a letter, by being a witness in any case, I'm going to ask you to do two things. If you're going to address the Board, in any manner, I'm going to need you to do two things prior to coming to this table, the first of which is to complete two witness cards per person. Complete two witness cards per person, and

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1 give those cards to the court reporter who's seated to my right.

2 So that's completing two witness cards per person, and
3 give those cards to the court reporter prior to taking a seat
4 at the table. The second thing I'm going to need you to do
5 is to now stand and be sworn in by Mr. Moy, secretary to the
6 Board.

7 MR. MOY: Good morning. Do you solemnly swear or affirm
8 that the testimony you're about to present in this proceeding
9 is the truth, the whole truth, and nothing but the truth?
10 Ladies and gentlemen, you may consider yourselves under oath.

11 CHAIRMAN JORDAN: Mr. Moy, any announcements?

12 MR. MOY: Yes. Good morning, Mr. Chairman, and members
13 of the Board. For the record, one of the cases on the docket
14 has been deferred and rescheduled at the request of the
15 Applicant from today's hearing to July 7th, and that is
16 Application No. 19029. This is the application of Eric Piersma.
17 That's it, Mr. Chairman.

18 CHAIRMAN JORDAN: Great. Thank you. Let's call 18991,
19 please.

20 MR. MOY: All right. Appeal No. 18991 of John Stokes. This
21 was heard before, Mr. Chairman, on, I believe, May the 5th. As
22 a preliminarily matter, as you'll recall, Mr. Chairman, there
23 are motions on the table. A motion to continue. A motion to
24 oppose that motion, and a motion to accept late filings from
25 the parties.

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1 CHAIRMAN JORDAN: Okay. Good morning. Please identify
2 yourselves.

3 MR. SULLIVAN: Good morning, Mr. Chairman, members of the
4 Board. My name is Marty Sullivan, here, on behalf of the
5 property owner. Thanks.

6 MR. STOKES: Good morning. I'm John Stokes, Appellant,
7 property owner at 1519 Varnum Street, N.W.

8 MR. LEGRANT: Good morning. I'm Matthew LeGrant, the
9 Zoning Administrator from DCRA.

10 MR. TONDRO: Good morning. My name is Maximilian
11 Tondro. I'm assistant general counsel with DCRA.

12 CHAIRMAN JORDAN: All right. There's a couple of motions
13 pending before the Board. The first one is a motion for late
14 filing, and it would be my --- recommendation to the Board would
15 be the order, unless the Board objects, that we grant the late
16 filing. I went back and looked at all the tape, twice, and the
17 date of June 22nd versus June 16th, et cetera, was very confusing,
18 one which I created, as I went back and looked at the tape,
19 and said, What was I saying?

20 And so in between that, it was really confusing in
21 regards to the June 22nd date. So unless the Board has any issue
22 with that, then we would accept the late filing. The second
23 matter is a motion to continue, a request by the Appellant,
24 and there were some documents that were filed, some revised
25 plans, and the Appellant's asking for the opportunity to hire

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1 someone to review the plans, to interpret the plans, so you
2 know what you're looking at. Is that correct?

3 MR. STOKES: Yes, sir.

4 CHAIRMAN JORDAN: And I would be inclined to grant that
5 continuance. I understand the representations made by the
6 property owner, and representation by DCRA, that there's no
7 significant change in the revised plans. However, that's your
8 word for it, and the Appellant has the opportunity to get
9 comfortable and take a look at those plans, and to be able to
10 defend those statements.

11 So unless the Board would be --- unless there's some
12 objection, I would be inclined to continue this to another
13 date, to continue this hearing.

14 MEMBER HOOD: Mr. Chairman, I would agree, but I would
15 also ask, since I'm on this case, that it be a date that I'm
16 going to be returning.

17 CHAIRMAN JORDAN: Let's tell you what date Mr. Hood ---
18 Mr. Hood's --- what's his next date?

19 MR. MOY: Mr. Hood is not sitting with the Board any time
20 in the month of July. As you know, we have an August recess,
21 so we're looking at the month of September, and that's wide
22 open, so --

23 MEMBER HOOD: I usually come after Mr. Turnbull,
24 Commissioner Turnbull.

25 MR. MOY: I don't have any selection of Zoning

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1 Commissioners for the month of September. So it'd be your
2 choice.

3 MEMBER HOOD: What about July? What about July?

4 MR. MOY: July. Mr. Turnbull's sitting on July 28th. So
5 the next hearing would be September the 15th. So that would be
6 you, if you want to follow Mr. Turnbull.

7 MEMBER HOOD: Okay. That's when I'll be back.

8 MR. MOY: Okay. Good enough. So it's September the 15th,
9 Mr. Chairman.

10 CHAIRMAN JORDAN: And if there's any documents being
11 submitted in regards to that, let's then do 10 days before the
12 hearing date for the Appellant, and then three days thereafter
13 for the other parties. So if you'll give us those dates, Mr.
14 Moy.

15 MR. MOY: Okay. Ten days would be September the 4th. And
16 what was the other date, sir, for filing? Is that the response
17 time?

18 CHAIRMAN JORDAN: Yes. So three days from that.

19 MR. MOY: Three days from that would be September 1st.

20 CHAIRMAN JORDAN: Okay. Is that sufficient time for you
21 to process, Mr. Moy?

22 MR. MOY: Yes, sir.

23 CHAIRMAN JORDAN: Okay. All right. So that would be the
24 order in this case. All right. Thank you. All right. Let's
25 call 27.

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1 MR. MOY: All right. To the table, the Applicant and
2 parties to Appeal No. 19027. This is the Appeal of Calderon
3 and Sawicki, I believe it's pronounced, and this is the appeal
4 of a decision of the Zoning Administrator to issue Building
5 Permit No. B as in Bravo, 1504436, at property 1731 New
6 Hampshire Avenue, N.W. Again, Mr. Chairman, a preliminarily
7 matter with motions have been filed in this appeal.

8 CHAIRMAN JORDAN: All right. Let's start from right to
9 left. Let's identify ourselves, please.

10 MR. TONDRO: Maximilian Tondro, assistant general
11 counsel, DCRA.

12 MR. LEGRANT: I'm Matthew LeGrant, Zoning Administrator,
13 DCRA.

14 MR. EVANS: Good morning. Philip Evans on behalf of the
15 owner/intervener.

16 MS. CALDERON: Rima Calderon, an Appellant.

17 MS. GRESHAM: Katherine Gresham, also an Appellant.

18 MR. SAWICKI: William Sawicki, also an Appellant.

19 CHAIRMAN JORDAN: I thought the Appellants were
20 represented by counsels. Are one of you the counsel for the
21 Appellant?

22 MS. GRESHAM: I'm a lawyer who is an Appellant, but I
23 don't represent the Appellants.

24 CHAIRMAN JORDAN: Right. And where is counsel?

25 MS. GRESHAM: There is no counsel.

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1 CHAIRMAN JORDAN: There's not? Okay. You wrote the --

2 MS. GRESHAM: I did, and I signed them as a member of the
3 D.C. Bar.

4 CHAIRMAN JORDAN: And give me your name again.

5 MS. GRESHAM: Katherine Gresham.

6 CHAIRMAN JORDAN: I missed one name. Let me ask
7 Appellants' names again. Please start.

8 MS. CALDERON: Rima Calderon.

9 CHAIRMAN JORDAN: That's one. Okay.

10 MS. GRESHAM: Katherine Gresham.

11 CHAIRMAN JORDAN: Got it.

12 MR. SAWICKI: William Sawicki.

13 CHAIRMAN JORDAN: Okay. Thank you. There are some
14 motions, several motions. I'm trying to sort my way through
15 this. First, the property owner filed a motion to intervene,
16 but certainly that's as a matter of right you're in the case,
17 and again as I keep preaching, that the property owner's real
18 property, person in, party in interest, and not DCRA in these
19 matters, so that's automatic. Motion to waive time
20 requirements and reopen the record. What's the basis of that?

21 MR. GLASGOW: There are a few of them that have been filed
22 on that same basis, at least --- sorry. At least there's the
23 one filed by the Intervener. I believe there was some
24 information provided to this Board after meeting with DCRA,
25 once the appeal had been lodged, and those additional exhibits

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1 and plans were submitted last week. And then there had been
2 a similar one filed by the Appellants as of Friday, I believe,
3 to submit some additional materials.

4 CHAIRMAN JORDAN: Friday? I didn't see anything --- well,
5 what was filed on Friday? Do we have something? I didn't see
6 that. And what's the request from the Appellants? Did you make
7 a motion for --

8 MR. SAWICKI: We did submit a motion to waive time
9 requirements to submit a response to Respondent's prehearing
10 statement which was received on Friday.

11 CHAIRMAN JORDAN: Got it. Okay. All right. So we'll grant
12 both of those, just moving on. Now there's a motion to dismiss,
13 based upon timeliness.

14 MR. GLASGOW: Correct, Mr. Chairman, and that would be
15 brought by the owner. It's pretty clear and undisputed, that
16 the regulations that control this proceeding, 3112.1, require
17 that Appellants bring an appeal within 60 days, whether they
18 knew or should have known about the decision at issue, and
19 there's a fairly complex factual background that's been
20 included in the motion, and in the opposition. Let me try and
21 summarize best --

22 CHAIRMAN JORDAN: No. Let's cut all that. I think we've
23 read all that, and trust me, we're quite aware. What is
24 different in between --- was there any different request for
25 relief, or any different grounds granted in the revised permit,

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1 as what was in the first permit?

2 MR. GLASGOW: When you say the first permit --

3 CHAIRMAN JORDAN: The one that was revised.

4 MR. GLASGOW: Well, there was a permit that issued in
5 October of 2014, that called for the guestroom renovations.
6 That was subject to some of the approval from the Zoning
7 Administrator's letter. The permit then was revised and
8 renumbered to allow for additional work on the ground, and
9 cellar --

10 CHAIRMAN JORDAN: All right. What was the difference
11 between those two permits? What was revised and what was added,
12 and what was subtracted?

13 MR. GLASGOW: Well, the work that was permitted under the
14 second permit was on the two levels. The bottom two levels.
15 The cellar and the ground floor. What's significant is in the
16 information contained in the Appellant's submission, they
17 understood, in October of 2014, or November --

18 CHAIRMAN JORDAN: That really is not what I'm asking. I
19 need you to kind of structure with me.

20 MR. GLASGOW: Yes?

21 CHAIRMAN JORDAN: I want to know the difference in what
22 was changed between the first permit and the second permit.
23 What different relief? Was there any different, different
24 changes in the plans that --- what were the changes, and what
25 was approved in the first one?

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1 MR. GLASGOW: The first permit covered the guest rooms
2 in this building, which were floors one through eight. Covered
3 a different scope. The second permit permitted the
4 construction activities on the ground floor and the cellar that
5 relate principally to the renovated kitchen, and some office
6 and some function space. So I hope that has clarified your --

7 CHAIRMAN JORDAN: So the second, or, well, the revised
8 permit, allow for the ground floor floor work, and what other
9 part?

10 MR. GLASGOW: The ground floor and the basement of the
11 cellar as we call it. The two lower levels of the property.

12 CHAIRMAN JORDAN: There's a difference between basement
13 and cellar, and I understand that. Okay. So the basement. All
14 right. Now let me turn to the Appellant. In your argument
15 regarding this, the alleged violation, the appeal to the Zoning
16 Administrator, what happened differently, that you're
17 challenging, that was not contained in the very first permit?

18 MS. CALDERON: I think I'm going to let Mr. Sawicki --

19 CHAIRMAN JORDAN: Make sure your microphones are on,
20 please.

21 MS. CALDERON: Oh, I'm sorry. I'm going to let Mr. Sawicki
22 answer that, because he understands the permits better.

23 MR. SAWICKI: The initial permit, in the actual
24 description of the permit, it does speak specifically to work
25 exclusive to the guest rooms. The revised permit, the scope

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1 of work of the revised permit is exclusive to everything but
2 the guest rooms. So if you were to look at the scope of work,
3 side by side, they are two completely different scopes of work,
4 with perhaps a little bit of overlap. The first permit was
5 exclusively guest rooms and the second permit was exclusively
6 commercial and function room spaces.

7 CHAIRMAN JORDAN: Okay. And that first permit, was that
8 March twenty --- when was that issued? October 2014, correct?

9 MR. GLASGOW: Correct, Mr. Chairman.

10 CHAIRMAN JORDAN: And the revised permit was when?

11 MR. GLASGOW: March of 2015.

12 CHAIRMAN JORDAN: March. What date?

13 MS. CALDERON: 19.

14 CHAIRMAN JORDAN: March 19th?

15 MS. CALDERON: Yes.

16 CHAIRMAN JORDAN: All right. So there are difference and
17 is the property owner arguing that there was --- the decision
18 letter contained, on September --- is it September 14th?
19 September --- is it --- the decision letter from the --

20 MR. GLASGOW: The Zoning Administrator's letter was in
21 July of 2013. That was a decision applicable to the zoning,
22 that covered all of the work in the hotel, for guest room, for
23 commercial expansion. It referenced the Historic District
24 aspects, and the compliance with 35 -- 350.4.

25 CHAIRMAN JORDAN: So that contained the work for the

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1 ground floor, the basement and cellar area?

2 MR. GLASGOW: And above that as well, Your Honor. Mr.
3 Chairman.

4 CHAIRMAN JORDAN: So there was no new determinations made
5 by the Zoning Administrator in the October 28, 2014 issue?

6 MR. GLASGOW: None that are in the record, and none that
7 we're aware of.

8 CHAIRMAN JORDAN: I don't care about the record. I need
9 to know, did it happen or not?

10 MR. GLASGOW: No, there's nothing that's been challenged
11 or been brought before this Board's consideration.

12 VICE-CHAIRPERSON HEATH: Challenged?

13 MR. GLASGOW: What is being challenged is the scope of
14 the determination made by the Zoning Administrator in the
15 summer of 2013.

16 CHAIRMAN JORDAN: I understand your argument. I really
17 understand your argument. I mean, I read the letters and the
18 words, and I've read it several times. I'm trying to --- for
19 me to help, maybe you, or help whoever, to get to the bottom
20 of it, there's certain questions I want to ask, and to
21 understand, or the Board needs to hear. That's kind of where
22 we are.

23 All right. So does the Appellants contend that there,
24 there was a new decision made regarding this application,
25 that's different than the determination that was made by the

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1 Zoning Administrator in his decision letter of March --- what
2 was that letter?

3 MR. GLASGOW: July 2013.

4 CHAIRMAN JORDAN: July 2013.

5 MR. GLASGOW: When the project was first introduced to
6 us --

7 CHAIRMAN JORDAN: I'm sorry. Let me correct myself,
8 because it's not that decision, that I think is critical here.
9 The March 12th, 2014 letter from the Zoning Administrator. Was
10 there anything --- was there any other substantive decision
11 change when the revised building permit came out --- a new
12 decision or any other decision that changed based upon that?

13 MR. SAWICKI: I'm sorry. The zoning letter was from 2013.

14 CHAIRMAN JORDAN: There was another one, March -- was
15 there not another one, March 12, 2014?

16 MS. CALDERON: Yes. That solely addressed the roof deck,
17 and a curtain, the --- was a response to an inquiry by the ANC.

18 CHAIRMAN JORDAN: There have been several letters going
19 back, from ANC and others, from the period of time in 2013,
20 when the ZA's first letter was issued. There were several
21 letters that went back and forth. There's one in November,
22 November something 2013.

23 MS. CALDERON: That was the ANC's letter.

24 CHAIRMAN JORDAN: There were some ANC meetings that went
25 on, and then there is another letter that kind of grabbed it

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1 all, and kind of summarized it all, to some extent, in November
2 --- excuse me --- March 12, 2014. Isn't that right? Isn't that
3 what happened?

4 MS. CALDERON: That's correct. But it was a very brief
5 letter that we received by email.

6 MR. SAWICKI: It was an email.

7 MS. CALDERON: It was an email that only addressed the
8 roof deck.

9 MR. SAWICKI: And if I may, at the time that letter was
10 received, we still had not seen the full plans of what they
11 were proposing. After the initial presentation of the project
12 to us, they had yet to go through the HPRB process. HPRB had
13 asked them to go back and work with staff to revise the design.
14 We had never seen the ultimate design. The first time ---
15 well, and that was for the roof deck.

16 The March 2014 email from the Zoning Administrator
17 addressed only the roof deck. We still hadn't seen that design.
18 We still haven't seen that design, because it is still working
19 its way through the process.

20 CHAIRMAN JORDAN: But you were aware of the July 2013
21 determination by the Zoning Administrator at that point.

22 MR. SAWICKI: Correct. But we could not confirm what they
23 were actually building against that letter, until we saw permit
24 drawings. The first permit drawings were just for the guest
25 rooms. We had no qualms with the guest rooms, so we waited until

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1 we saw the next permit, which was the permit we saw in March
2 of 2015, so that we could compare it against the original zoning
3 determination to see if it complied, as we knew the project
4 was continuing to evolve.

5 CHAIRMAN JORDAN: So when were the drawings filed.

6 MR. GLASGOW: Do you have that?

7 MS. CALDERON: Right here. Yes.

8 MR. GLASGOW: February of 2014, if I'm not --- 2015, if
9 I'm not mistaken.

10 CHAIRMAN JORDAN: Does the DCRA, or does the property
11 owner have a date?

12 MS. CALDERON: Your web site. I have that here. So it's
13 the permit that is the subject of our appeal, and was filed
14 --

15 MR. SAWICKI: February 12, 2015. When they were filed.

16 MS. CALDERON: We were told, at that time, by the records
17 clerk at DCRA, that we could not --- actually, we'd been told
18 before, that we could not obtain copies of the drawings that
19 are submitted with permits until, until there is an approved
20 permit. Now I know that there have been some --- I read one
21 hearing at which DCRA, or maybe it was a decision, said, well,
22 you should know better, that you can get that from a Freedom
23 of Information Act request. That they're still telling people,
24 who go asking for permit drawings, that you can't have those
25 until the permit is approved.

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1 MR. TONDRO: Mr. Chair, this is a point of reference. I
2 believe the districts of the roof top is actually not
3 applicable. That's not under the building permit that's being
4 appealed. That's a separate building permit that was issued
5 completely separately.

6 CHAIRMAN JORDAN: So the February 12 drawings are only
7 the roof top?

8 MR. SAWICKI: The February 12 drawings are only the
9 ground floor and lower level commercial and function room
10 spaces, which they submitted as a revision to the guest room
11 permit.

12 CHAIRMAN JORDAN: So what are you saying, Mr. Tundro?

13 MR. TONDRO: All I'm saying is in terms of the issue of,
14 I believe it is the March letter from the Zoning Administrator,
15 that involved the roof deck. Any discussion of roof deck is
16 not germane to this issue.

17 CHAIRMAN JORDAN: We're way past that point. We're in
18 something else. We talked about that at least 10 minutes ago.
19 But anyway, that letter ---- there were other letters, and
20 other conversations. And so the last thing that the Zoning
21 Administrator may -- actually opined on was in that letter.
22 But there were so many activities and decisions, and
23 discussions that were going on before that point.

24 Now it really goes towards your way. If you don't want
25 it to go that way on that particular point. But anyway. So I'm

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1 trying to find out what, when was the ground --- excuse me --
2 the ground floor and basement plans filed. When was that?

3 MS. CALDERON: February 12, 2015. This year.

4 CHAIRMAN JORDAN: You were going to say?

5 MR. GLASGOW: A slightly different position, Mr.
6 Chairman. The original permit was filed months before, back
7 in 2014, with various drawings. As has been noted, in October
8 of 2014, DCRA requested that a different scope of work be split
9 up for the new permit, which became the lower two levels.

10 That's the permit the application --- the application
11 was filed in February of 2015, but the actual plans have been
12 filed some, at least eight --- a version of the plans, the plans
13 did evolve as the permit process was going forward, were filed
14 earlier in 2014, and in fact there were plans that Appellants
15 had --

16 CHAIRMAN JORDAN: Approved plans in 2014?

17 MR. GLASGOW: No. The plans were not approved until ---
18 the approved plans for the guest room space was --- that permit
19 was issued in November of 2015. The plans eventually approved
20 for the March, the two, lower two-level plan, those were
21 submitted in the final set --- let me check with the architect.

22 CHAIRMAN JORDAN: When were they approved?

23 MR. GLASGOW: Well, when the permit was issued in March
24 of, March 19, two thou --

25 CHAIRMAN JORDAN: They were finally --- excuse me. When

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1 they --- when were they filed?

2 MR. SAWICKI: Those were filed in February 2015.

3 CHAIRMAN JORDAN: Okay. So that's --

4 MR. SAWICKI: 14.

5 CHAIRMAN JORDAN: February 2014.

6 MEMBER HOOD: Can we go back to your November date. I may
7 be hearing things. I thought you said November 2015.

8 MR. GLASGOW: I'm sure I have misstated the date, on
9 occasion. November of 2014.

10 CHAIRMAN JORDAN: Okay. Thank you. Because I was going
11 to say, why are we here?

12 MS. CALDERON: 2014.

13 MR. GLASGOW: My apologies.

14 CHAIRMAN JORDAN: Wait a minute now. I'm getting two
15 different dates. So when was the ground floor plans filed? I'm
16 hearing 2015, and I'm hearing 2014. Same February or something.

17 MS. GRESHAM: Building Permit No. B1504436, which is
18 what Appellants are appealing, was filed on February 12th, 2015.
19 I think what he is arguing is that there were plans for the
20 basement and the ground floor that were filed, along with
21 building permits for the guest room, which was filed on March
22 6th, 2014.

23 Those specifically stated, with respect to the
24 non-guest room areas, these areas are not included with this
25 application. It didn't say application. It said with ---

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1 whatever it said, it's in our briefs. I can't exactly recall,
2 but it excluded those from consideration at that --

3 CHAIRMAN JORDAN: Okay. All right. So let's do this.
4 Let's proceed on and hear the substantive matter here. I think
5 I want to sort through, and I think there's some other documents
6 I need to look at, the Board would need to look at, to try to
7 make sure, who's on first and who's on second, but I think I'm
8 okay and understand what's going on. Board, questions?
9 Anybody on the Board?

10 MEMBER HOOD: I think your discovery, as you were going
11 through, was helping me kind of understand, so I'm looking
12 forward to getting to the substantive part now.

13 CHAIRMAN JORDAN: All right. So let's go through the
14 substantive and reserve ruling regarding the motion on
15 timeliness. So let's hear from the Appellant on their
16 argument and discussion.

17 MR. MOY: Mr. Chairman, sorry to interrupt. Are you going
18 to allocate any time?

19 CHAIRMAN JORDAN: How long do you think you need to
20 present?

21 MS. GRESHAM: I've kept my remarks to I think about 10,
22 or perhaps 12 minutes.

23 CHAIRMAN JORDAN: Hey, that's a winner with me. I'll give
24 you fifteen. I'll give you another three. So you're going to
25 set the scope.

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1 MS. GRESHAM: Is it okay if I address, briefly, the Motion
2 To Dismiss? Or are you fine with that based on the brief and
3 what you've heard so far?

4 CHAIRMAN JORDAN: You can use your 15 minutes whichever
5 way you want to use it.

6 MS. GRESHAM: I'd be happy. Yes.

7 CHAIRMAN JORDAN: Okay.

8 MS. GRESHAM: Good morning. I'm Katherine Gresham. I live
9 next door to the Carlyle Hotel, and am the owner of unit number
10 101 in the Portsmouth Condominium. My apartment is on the first
11 floor, adjacent to the hotel's driveway. Everyone who lives
12 in the neighborhood is affected by having a hotel in our midst,
13 but I'm also affected by the comings and goings in the driveway,
14 which means noise from refuse removal trucks, linen
15 deliveries, food and beverage deliveries.

16 The hotel's valets, parking and retrieving cars in the
17 lot behind the building. This can be a nuisance, but it's a
18 fact of life that comes with living next to a hotel, and I really
19 like living next to a hotel. There's almost always a cab out
20 front when I need one. That's how I got here today. I enjoy
21 seeing the tourists going off to see our wonderful city. The
22 valets smile and wave as I go by. We're friends.

23 The activity also makes the block safer. Before
24 getting in to my analysis, I want to make something very clear,
25 which Chair Jordan, you also touched on. I am an Appellant

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1 who is also an attorney. I don't represent the Appellants. I
2 know about zoning, having worked for ten years as a city planner
3 here. I also have experience writing legal briefs, having spent
4 20 years as an assistant general counsel at the Securities and
5 Exchange Commission.

6 I prepared the prehearing statement and the response to
7 the Motion To Dismiss, because there really wasn't anyone else
8 with experience writing legal briefs. I signed these
9 documents as a member of the D.C. Bar, so that this Board would
10 know that I'm a lawyer, subject to the ethical responsibilities
11 of D.C. Bar members.

12 But I'm appearing here as an Appellant who is affected
13 by the operations of the hotel, and not as counsel representing
14 the Appellants. Getting back to the substance, although there
15 would be no hotels in residential neighborhoods in the purest
16 of all zoning worlds, the D.C. zoning regulations allow
17 existing hotels to remain in our 5-D zones, as long as there
18 is no increase in the amount of commercial activity associated
19 with the hotel. This is a balance, balancing of interests that
20 makes a lot of sense. The owner gets to renovate and reconfigure
21 the inside of the hotel, but can't increase the unit --- the
22 uses that disturb the quality of the surrounding neighborhood.

23 The neighbors are assumed to have become accustomed to
24 the existing level of commercial activity, but are protected
25 from any increase in the level of commercial activity. The

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1 Carlyle's new owner, CS Bond Street, wants to do what any hotel
2 wants to do --- increase the revenue-generating potential of
3 the property. The building permit allowed the owner to do just
4 that, by expanding the restaurant and bar area, and creating
5 an enormous new meeting room.

6 The Zoning Administrator signed off on the changes
7 authorized by the permit as consistent with the zoning
8 regulations. I've looked carefully at the facts, that is, the
9 level of commercial activity in the existing hotel, and the
10 level of commercial activity allowed by the permit. I've also
11 looked carefully at the applicable provisions of the zoning
12 regulations, especially Section 350.4(e), and the hotel
13 definition in Section 199.1.

14 I've also studied the prehearing statement of DCRA's
15 general counsel, explaining why he believes there has been no
16 violation of the zoning regulations. It's very clear to me,
17 that serious factual and legal errors were made when the permit
18 was issued authorizing the changes to the hotel's basement and
19 first floor.

20 CHAIRMAN JORDAN: Let me back up one second. When ---
21 let's stop the clock, Mr. Moy, because I may, might have been
22 slightly remiss here. When I said how much time do Appellants
23 need, we said fifteen, and not that you personally need
24 fifteen.

25 MS. GRESHAM: Oh, I see. Oh. I don't know how much time

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1 I've gone, and I didn't actually time this.

2 CHAIRMAN JORDAN: No, no, no. Let's --- you know, we're
3 consolidating this for the sake of appeal, and you all roll
4 in to the same document. It's actually, although there's three
5 of you, you're all in one group. Okay.

6 MS. GRESHAM: Yes. I think that the other --- Mr. Sawicki
7 and Ms. Calderon are giving very brief remarks, and that most
8 of the time is allocated to me.

9 CHAIRMAN JORDAN: The other thing is if -- we're not going
10 to re-hear other arguments, so whatever you talk about, if we
11 get something new and fresh from others, then fine, but the
12 --- you know, we're not going to just beat up on and be
13 redundant. Okay?

14 MS. GRESHAM: Understood.

15 CHAIRMAN JORDAN: Okay. I just want to make sure we're
16 on the same page.

17 MS. GRESHAM: Yes. Thank you.

18 CHAIRMAN JORDAN: Go ahead, Mr. Moy. Thank you. Please
19 proceed.

20 MS. GRESHAM: It's very clear to me, then, that the
21 serious factual and legal errors were made when the permit was
22 issued. These errors vitiate the balance the drafters of the
23 zoning regulations sought to achieve in Section 350.4(e),
24 between the owner of an existing hotel and the people who live
25 nearby.

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1 The Board of Zoning Adjustment, you, are entrusted with
2 the responsibility of hearing appeals, from granting building
3 permits, in order to assure that those decisions comply with
4 the zoning regulations. This Board should not allow those --
5 these errors to stand. If it does, what is happening to the
6 Carlyle Hotel can happen to any existing hotel in an R-5 Zone.

7 I would like, just briefly, to address the Motion To
8 Dismiss that was filed by counsel for the owner. I note that
9 DCRA's general counsel doesn't address this motion in his
10 prehearing statement, which I think was a wise decision on his
11 part. The D.C. Court of Appeals has already resolved whether
12 separate appeals are allowed from a decision of the Zoning
13 Administrator and a decision of the inspector of buildings.

14 The court, affirming a decision of this Board, stated
15 in Bannum, quote: we agree with the BZA that each type of
16 decision is separately appealable. That quote comes from 894,
17 2d at 430.

18 This is a definitive ruling, interpreting an
19 unambiguous statute. There's no wiggle room here. To the extent
20 that later decisions of this Board are in conflict with Bannum,
21 they were wrongly decided. I must say I've read the post Bannum
22 decision cited in the motion to dismiss, and they don't appear
23 to conflict, and involve circumstances and facts that are very
24 different from this case.

25 And even if there is some way around Bannum, the owners

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1 kept the neighbors in the dark about the plans for the basement
2 and the first floor. That is discussed in quite a bit of
3 detail, with affidavits, and the --- an account in the response
4 we filed to the Motion To Dismiss. Basically, the Appellants
5 needed two things before they could file their appeal.

6 First, they needed information about the plans for the
7 hotel's commercial adjuncts and function rooms, which they did
8 not have until March 30, when they received the plans for the
9 approved building permit from DCRA. Second, they needed the
10 attachment to the determination letter in order to understand
11 how the Zoning Administrator reached his erroneous conclusions
12 about the existing units in the basement and first floor.

13 They did not have this information until March 30, when
14 the Zoning Administrator's Office made the attachment
15 available. Once the Appellants had this information, they
16 scrambled to file the appeal as quickly as possible, knowing
17 that the building permit gave the owner the right to begin
18 construction of the commercial adjunct and --- adjuncts and
19 function rooms.

20 The appeal was filed on April 17th, less than a month
21 after DCRA issued the building permit, and well within the 60
22 days allowed to file an appeal.

23 I will now move on to address the merits. In preparing
24 my remarks for this hearing, I quickly found myself all tangled
25 up in a factual and definitional "jungle" and a very confusing

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1 statement.

2 I found the way to avoid this problem is to focus the
3 analysis on a basic principle. Here is my principle.

4 The owner is limited to the area devoted to function
5 rooms and commercial adjuncts when the hotel was purchased --

6 CHAIRMAN JORDAN: But you're not saying that it's --- are
7 you saying they cannot change the room --

8 MS. GRESHAM: No, no, no.

9 CHAIRMAN JORDAN: Are you just saying the total --

10 MS. GRESHAM: No, that's, that's --

11 CHAIRMAN JORDAN: Let me finish. --- the total overall
12 square footage cannot exceed that?

13 MS. GRESHAM: The total overall square footage cannot
14 exceed that. Then to restate: The owner is limited to the total
15 area devoted to function rooms and commercial adjuncts when
16 the hotel was purchased from the previous owner. This
17 principle takes care of several problems that arise in applying
18 Section 350.4(e) to the Carlyle Hotel.

19 Section 350.4(e), leaving out words that don't apply
20 here, says: Hotel, in existence as of May 16, 1980, with a valid
21 certificate of occupancy, provided that the total area within
22 the hotel devoted to function rooms, exhibit space, and
23 commercial adjuncts may not be increased.

24 The earliest certificate of occupancy the Appellants
25 were able to find for the hotel is dated December 3rd, 1986.

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1 It says there were a hundred and six --- seventy-six units,
2 1-7-6 units, but says nothing about the total area devoted to
3 function rooms, exhibit space, and commercial adjuncts.

4 There doesn't seem to be anyone who can establish the
5 facts about those uses back then either.

6 The most reasonable way to resolve this problem is to
7 use, as the baseline for the existing hotel, the time facts
8 are known, that allow a determination of the total area devoted
9 to function rooms, exhibit spaces, and commercial adjuncts.

10 The Appellants have adopted as the baseline, the uses
11 in the hotel when the previous owner sold it to the new owner.
12 In addition to addressing the difficulties of applying --

13 CHAIRMAN JORDAN: Here again, you're saying --- go back.
14 That last --- start that paragraph again.

15 MS. GRESHAM: Yes. The Appellants have adopted as the
16 baseline the uses in the hotel when the previous owner sold
17 it to the new owner, CS Bond Street.

18 In addition to addressing the difficulties of applying
19 Section 350.4(e) here, this --

20 CHAIRMAN JORDAN: So let me stop you.

21 MS. GRESHAM: Yes.

22 CHAIRMAN JORDAN: So let's say if there was a change in
23 the dimensions or the functional space in the hotel done by
24 the new owner, but it was different than in May 16th, 1080,
25 what's your reply to that? Is that a problem?

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1 MS. GRESHAM: Well, we --- oh, May 16th, 1980.

2 CHAIRMAN JORDAN: Which is an applicable date, which kind
3 of took a snapshot of the functional space requirement, isn't
4 that right?

5 MS. GRESHAM: Well, just --- oh, there, there is no
6 snapshot available as of May six --

7 CHAIRMAN JORDAN: I'm just asking. So let's say --- so
8 let's say May 16th, 1980, there was --- I'm just using these
9 numbers --- there was 8,000 square feet that was devoted to
10 the function area space, and so then if the new owner came about
11 and he used only 4,000, what controls?

12 MS. GRESHAM: I guess this gets metaphysical because you
13 can't --- you don't know that it's 8,000. You don't know what
14 it was, back then.

15 CHAIRMAN JORDAN: But isn't your argument that this is
16 a violation of 350.4?

17 MS. GRESHAM: We don't know whether there was --

18 CHAIRMAN JORDAN: That's --- okay.

19 MS. GRESHAM: I guess.

20 CHAIRMAN JORDAN: I got you.

21 MS. GRESHAM: Yes.

22 CHAIRMAN JORDAN: I think you answered my --- yes, I think
23 so.

24 MS. GRESHAM: Yes.

25 CHAIRMAN JORDAN: It may not be the answer you wanted,

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1 but you answered it. All right. All right. Go ahead. Proceed.

2 MS. GRESHAM: So they can do anything if you don't know

3 --

4 CHAIRMAN JORDAN: I'm not saying that. I'm just asking
5 questions, so I can help in making a determination based upon
6 your appeal.

7 MS. GRESHAM: Understood Thank you.

8 So going back, the Appellants have adopted as the
9 baseline the uses in the hotel when the previous owner sold
10 it to the new owner. In addition to addressing the difficulties
11 of applying Section 350.4 in this case, the baseline is fair
12 to the new owner, who bought the property, knowing the existing
13 uses and the limitations imposed by Section 350.4(3).

14 The facts about the uses in the basement and the first
15 floor, when CS Bond Street purchased the hotel, are included
16 in the three declarations attached to the Appellants'
17 prehearing statement.

18 One of those declarations comes from me, and back in
19 2008, November 2008, there was a fire in the Portsmouth, and
20 I lived in the hotel for about a month, and that's when it's
21 really good to be living next door to a hotel.

22 I had a nice room on the street where I live, with a
23 kitchenette. I didn't even have to cancel my newspaper
24 subscription. I would get up, get dressed, go next door to
25 retrieve my newspaper, and take it back to the hotel to read

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1 during breakfast. It worked really very well.

2 So proceeding with the argument, DCRA's prehearing
3 statement uses as the baseline the --- and I'm quoting here
4 from page two --- square footage of the function rooms and
5 commercial adjuncts that existed prior --

6 CHAIRMAN JORDAN: Excuse me a second.

7 Go ahead. Proceed.

8 MS. GRESHAM: --- prior to the permit. Those words are
9 "prior to the permit."

10 CHAIRMAN JORDAN: Let me stop you one second. Cliff, stop
11 the clock one second.

12 (Pause)

13 CHAIRMAN JORDAN: Thank you. I'm sorry. Let's proceed.

14 MS. GRESHAM: Yes. DCRA's prehearing statement uses as
15 the baseline the square footage of function rooms and
16 commercial adjuncts that existed prior to the permit.

17 This is contrary to Section 350.4(3). It says: Hotel,
18 in existence as of May 16, 1980, provided that the total area
19 within the hotel devoted to function rooms, et cetera, can ---
20 may not be increased.

21 "The hotel" refers back to hotel in existence as of May
22 16th, 1980.

23 This means the baseline should be the total area devoted
24 to those uses in the existing hotel. Normally --

25 CHAIRMAN JORDAN: How do we extrapolate from 1980 to what

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1 was existing?

2 MS. GRESHAM: Let me finish the sentence.

3 CHAIRMAN JORDAN: Okay.

4 MS. GRESHAM: This means the baseline should be the total
5 area devoted to those uses in the existing hotel, normally,
6 at May 16, 1980, but in this case, the hotel as it existed under
7 the previous owner. That's our --

8 CHAIRMAN JORDAN: Where is that in the regulation?

9 MS. GRESHAM: It's not anywhere in the regulation. The
10 regulation doesn't anticipate this situation. It anticipates
11 that you know --

12 CHAIRMAN JORDAN: If it's not in a regulation, then how
13 did the Zoning Administrator violate that which was not in the
14 regulation?

15 MS. GRESHAM: Well, I think you have to come to the most
16 reasonable accommodation that effectuates the purpose of the
17 provision. You can't just say: Oh, we don't know. This
18 protection for the neighbors doesn't apply.

19 You say: What's the best we do know? And the best we know
20 is what was in the hotel when it was sold.

21 Yes. Beyond honoring the language of Section 350.4(e),
22 perhaps I should say the purpose of Section 350.4(e), there
23 is a practical reason not to use prior to the permit as the
24 baseline. DCRA's formulation allows an owner to turn existing
25 guest room and service areas in to the restricted, three

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1 restricted categories, by making changes that don't require
2 a permit.

3 The owner can then use this new restricted space to make
4 changes that do require a permit, which is exactly what CS Bond
5 Street is doing here.

6 If the basement is prior to the permit, then anyone can
7 buy a hotel, establish impermissible new uses, and apply that
8 square footage to justify an increase in the total area devoted
9 to the restricted uses.

10 One other point I would like to make is that the baseline
11 for existing uses also can't include illegal uses.

12 There's nothing in the zoning regulations that says
13 this. But there doesn't really need to be. You can't use
14 something that's illegal in an R-5 Zone to make something legal
15 under Section 350.4(e).

16 Apparently, the previous owner used some of the office
17 space in the basement for property management activities
18 unrelated to hotel operations.

19 D.C. and the owner count this as commercial adjunct
20 space, but that's contrary to the D.C. Zoning Regulations. It's
21 commercial office space, which isn't allowed in an R-5 Zone.
22 In addition, commercial adjuncts, as defined in Section 199.1,
23 are, quote, retail and service establishments.

24 Office use is not a retail or a service use.

25 Another illegality concerns the six guest rooms on the

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1 first floor that were converted to function room and commercial
2 adjunct space.

3 The conversion is evident from the drawings that
4 accompanied the application for the permit, which very clearly
5 show bathrooms and kitchenettes, and closets in these rooms.

6 DCRA, and the owner, count these six rooms as commercial
7 adjuncts and function rooms.

8 But that's wrong. Unless there was a corresponding
9 decrease in commercial adjunct and function room space. And
10 there is no evidence that there was any corresponding decrease.

11 CHAIRMAN JORDAN: Let me ask you. How did you calculate
12 the square footage that you assert these rooms were used for?
13 How did you calculate those?

14 MR. SAWICKI: I have an engineering background, so I
15 pulled out a scale, and I scaled off of their drawings,
16 initially, to determine the appropriate scale for the current
17 drawings.

18 CHAIRMAN JORDAN: Got it. Thank you.

19 MS. GRESHAM: Thus the conversion of these guest rooms
20 to commercial adjunct and function room use was illegal, and
21 they can't be counted. This brings me almost to the end of
22 my remarks, and to the crux of the case, which is summed up
23 at pages 7 and 8 of DCRA's prehearing statement.

24 There are three principal areas in dispute. First, the
25 yoga studio, slash, gym.

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1 This was in the area of the basement occupied by offices
2 in the existing hotel, which included space used for 1) hotel
3 administration, which is properly classified under the hotel
4 definition as guest room areas, and 2) --

5 CHAIRMAN JORDAN: What about their contention that it was
6 subdivided, kind of two different spaces, that the space was
7 --- that space was actually used for not managing that hotel
8 but to manage other property? What about that?

9 MS. GRESHAM: That's the second use. So first, there's
10 hotel administration for the Carlyle, and second, there's
11 property management activities unrelated to the hotel, which
12 is an illegal use in an 5-R Zone.

13 Thus, none of the office space in the basement can be
14 counted as existing commercial adjunct space to justify new
15 restricted space under Section 350.4(e).

16 Second. The art gallery. This was also located in the
17 area of the basement occupied by offices, and can't be counted
18 as existing commercial space, for the same reasons.

19 There's another reason. An art gallery isn't a
20 commercial adjunct to a hotel under the definition in Section
21 199.1. It is not --- I'm quoting from the definition ---
22 customarily, incidental, and subordinate to hotel use, which
23 is what is meant by the word, adjunct.

24 If you look at the "such as" list in the definition, it
25 says restaurant, coffee shop, barber shop, news stand, and

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1 other similar uses.

2 These are the kinds of things a typical hotel guest needs
3 during a stay at a hotel and thus are commercial adjuncts to
4 the hotel.

5 This isn't true of art galleries, which are special
6 destinations, typically found in a few areas such as the
7 cluster of galleries along R Street, which is near the hotel.

8 And then third, the third area of dispute is the
9 converted guest rooms. These rooms, as I've said, were
10 converted without a compensating reduction in commercial
11 adjunct and function room space, and thus can't be counted in
12 determining restricted space.

13 In conclusion, the Zoning Administrator, and D.C.'s
14 general counsel, are wrong in concluding that the changes to
15 the Carlyle Hotel, authorized by the building permit, do not
16 increase the total area devoted to function rooms and
17 commercial adjuncts.

18 The Board of Zoning Adjustment, this Board, is entrusted
19 with the responsibility of hearing appeals of decisions
20 granting building permits, in order to make certain that those
21 decisions comply with the zoning regulations.

22 Serious legal and factual errors were made when the
23 permit was issued, errors that destroy the careful balance that
24 drafters of Section 350.4(e) sought to achieve between a hotel
25 owner and nearby residents affected by the hotel.

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1 This Board should not allow these errors to stand. It
2 isn't just the neighbors of the Carlyle Hotel who are affected
3 by your decision in this appeal. Unless the errors are
4 corrected, what is happening at the Carlyle Hotel can happen
5 in any neighborhood where there is an existing hotel allowed
6 by Section 350.4(e).

7 CHAIRMAN JORDAN: Thank you.

8 MS. GRESHAM: Thank you.

9 CHAIRMAN JORDAN: So let's hear from --- you know, you
10 used up all your 15 minutes. You did that.

11 MS. GRESHAM: I'm sure --

12 CHAIRMAN JORDAN: I'll give each one of you --- you want
13 to take three minutes to say something? I'll give you three
14 minutes.

15 MR. SAWICKI: All right. Certainly. My name is William
16 Sawicki. Having first moved in to the Dupont Circle
17 neighborhood in 1992, I am the current owner of Unit 83, and
18 a 50 percent owner of Unit 82 at the Whyland Condominium,
19 located adjacent to and due east of the Carlyle.

20 My properties have multiple windows and balconies that
21 look directly out at the Carlyle. To respond to an earlier
22 discussion, we searched the DCRA records for that 1980
23 benchmark. Couldn't find anything.

24 So then we did a thorough search, moving forward from
25 1980, for any permits that would have shown an allowed

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1 conversion of space from one use to another. There are no
2 records at DCRA that shows any conversion of any space since
3 then.

4 So then to Katherine's point, we chose the last
5 ownership as the benchmark.

6 CHAIRMAN JORDAN: But you chose that.

7 MR. SAWICKI: That's what they inherited.

8 CHAIRMAN JORDAN: But that's what you chose.

9 MR. SAWICKI: Correct, correct.

10 CHAIRMAN JORDAN: So what says the Zoning Administrator
11 can't choose something else?

12 MS. GRESHAM: If what's chosen is, allows a flaunting ---
13 not -- what's the word?

14 CHAIRMAN JORDAN: I understand all the --- that comment.
15 But I'm talking about what the regulations require. But go
16 ahead. Please proceed. You still have another two minutes.

17 MR. SAWICKI: I will proceed. All right. I'm an engineer
18 by education but I've got a 29 year career in the real estate
19 profession, with experience in urban real estate development
20 and property management.

21 I understand many of the operational challenges that
22 come with mixed-use hotel commercial properties. When you're
23 a mixed-use building located in a residential neighborhood,
24 completely surrounded by residential properties, those
25 operational challenges are intensified. For the two uses to

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1 co-exist peacefully, there needs to be a fine balance in order
2 to cater to the needs of the transient hotel guest, while not
3 upending the day-to-day expectation of the surrounding
4 residents.

5 It's for this reason that I initially got involved in
6 this action. The March 2015 permit drawings describe the work
7 proposed to be done at the hotel, on the ground floor and lower
8 levels, which included what I perceive to be a significant
9 expansion of their bar, restaurant, and meeting room spaces.

10 Upon a more detailed review of the drawings, it was clear
11 that the work did not contain a comparable increase in the
12 back-of-house infrastructure that would support these
13 increased commercial uses.

14 The drawings had no indication that the hotel was
15 sufficiently planning to deal with the mundane operational
16 realities of their newly-expanded commercial businesses.
17 Things like increased deliveries, wet and dry trash storage
18 and removal, rodent control, customer parking, noise, smokers,
19 and the like.

20 My original concerns were only amplified. I therefore
21 took a leading role with my fellow neighbors, in an attempt
22 to learn about what the hotel was proposing, and the various
23 regulations to which their work would be subject. The result
24 of that research is why we're here today, and while I can only
25 to Katherine's level of eloquence, I have two additional points

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1 to make.

2 First. I respectfully submit as Exhibit A to this
3 hearing, this photograph -- where was I? -- which I will call
4 Exhibit A to this hearing. This photograph --

5 CHAIRMAN JORDAN: What are you submitting this for?

6 MR. SAWICKI: Taken this past Sunday, this is roughly the
7 view you see outside of Katherine's window, looking in to the
8 shared space between her building and the hotel. The hotel,
9 with its newly-renovated guest rooms, have been open for about
10 a month, and what you see here is their solid waste management
11 that they currently use.

12 CHAIRMAN JORDAN: Is that the force of part of your
13 appeal?

14 MR. SAWICKI: I'm sorry?

15 CHAIRMAN JORDAN: This is a part --- this is not part of
16 the appeal?

17 MR. SAWICKI: Correct.

18 CHAIRMAN JORDAN: Okay. And is this already in the
19 record?

20 MR. SAWICKI: No, it is not.

21 CHAIRMAN JORDAN: Then it's not going to be accepted.

22 Move on.

23 MR. SAWICKI: Okay. My second point does factually
24 support the appeal and it's a significant way. Appellants
25 maintain that the owner's new work will not comply with Section

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1 351.28 of the regulations. This section states, explicitly,
2 no part of the commercial adjunct shall be visible from a
3 sidewalk. In their respective prehearing statements, owner and
4 respondent both dismiss our claim, by stating that 351.28 only
5 applies to new commercial adjuncts, and that since the owner
6 is merely shuffling their commercial adjunct spaces around,
7 and the areas of the hotel in question were commercial adjuncts
8 before, there is simply no merit to Appellant's claim.

9 Both of these assertions are incorrect. Nowhere does the
10 language of Section 351.28 limit itself to just new commercial
11 adjuncts. The owner then states that since these spaces
12 contained nonconforming commercial adjuncts before, our claim
13 has no merit.

14 It is standard practice, however, for the city to
15 require that buildings undergoing significant renovations be
16 brought up to current codes, requiring old, even historic
17 buildings, to comply with handicap accessibility requirements
18 in the event of a major renovation, is a perfect example of
19 this.

20 Simply because the old configuration of the hotel did
21 not comply with this regulation is not sufficient
22 justification for disregarding the application for this
23 regulation to the owner's new work.

24 Furthermore, even if ruled that Section 351.28 only
25 applies to new adjuncts, the hotel's new bar operation, clearly

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1 a commercial adjunct, is located in the space that was previous
2 occupied by a function room.

3 This means that owner's new bar will indeed be a new
4 commercial adjunct in this location, and it will clearly be
5 visible from the sidewalk through its front and side windows.
6 Therefore, the proposed work does not comply with 351.28 of
7 the regulations. At this point I will cede to Rima.

8 CHAIRMAN JORDAN: Please. Three minutes, please.

9 MS. CALDERON: I think I'd like to speak a little bit off
10 the --- I'd like to speak to this issue of 1980 and 1996.

11 CHAIRMAN JORDAN: Just a second. I think we have --- we're
12 trying to get there by the --- okay. There you go. Please.

13 MS. CALDERON: Okay. Just briefly, I think the issue of
14 reasonable, of what we can reasonably find is really an
15 important one, and one that we hope that you will consider.
16 If you ca -- if you don't have the information, and it's ---
17 and if the regulation does not address it, it does not mean
18 that we can't be reasonable about what we use as a benchmark.

19 My name is Rima Calderon. I have owned and lived in Unit
20 G at 1751 New Hampshire Avenue, N.W., since 2000. I am a lead
21 Appellant on this action. I am also the president of the
22 condominium association for my building. Therefore, I am
23 speaking on my own behalf, and also on behalf of my condominium
24 association, and the other 32 Appellants.

25 We are a group of neighbors committed to maintaining the

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1 characteristics that have made Dupont Circle one of the most
2 charming neighborhoods in the city.

3 We welcome the new owner's renovations to the Carlyle
4 Hotel. We ask simply that the BZA will consider the DCRA's
5 determination and uphold the laws of the District of Columbia
6 regarding what is allowable by commercial venues that are
7 grandparented to operate in residential neighborhoods.

8 Both Ms. Gresham and Mr. Sawicki have explained
9 specifically how the owner's work does not comply with Sections
10 350.4(3) and 351.28 of the regulations, with multiple levels
11 of support that refute both the owner's and respondent's
12 claims.

13 While this should be sufficient for you to rule in favor
14 of this appeal, I urge you also to consider the following.

15 Having carefully reviewed owner's and respondent's
16 prehearing statements, which are quite similar, we wonder if
17 DCRA, during their discovery for this case, contacted the
18 hotel's prior owners or other outside parties cited in these
19 proceedings, to independently verify the information
20 presented in the submitted documents.

21 I point to the large number of issues, including square
22 footage designations and calculations, in addition to the
23 definitions of the spaces under consideration, all of which
24 require careful review. Therefore, I each --- I urge each
25 member of the Board to take the necessary time to carefully

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1 consider the information presented by the Appellants, the
2 owner, and the respondent.

3 We ask you to carefully consider, apply, and uphold the
4 zoning regulations, which were crafted to preserve the
5 delicate balance between residential and commercial uses in
6 exactly this type of residential location.

7 Our goal is to hold the hotel's owners accountable to
8 D.C.'s zoning laws, and in that way, to achieve an outcome that
9 will sustain the residential characteristics of this beautiful
10 Dupont Circle street.

11 We are concerned about the negative impact on the
12 residential character of our neighborhood, specifically
13 related to the significant increase in commercial activity
14 that will result from the illegal expansion of the hotel's bar,
15 restaurant, and function room businesses. For these reasons,
16 the Appellants urge you to support this appeal and direct DCRA
17 to revoke Building Permit No. B1504436. That concludes my
18 remarks. My written remarks.

19 CHAIRMAN JORDAN: Very good. Thank you. Then let's turn
20 to DCRA for its presentation, please. How much time do you think
21 you're going to need? We've read your brief.

22 MR. TONDRO: I hear you, yes. I'll take five minutes,
23 please.

24 CHAIRMAN JORDAN: But let me --- before you start off,
25 let me ask you. Where did you establish the threshold of what

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1 was in existence on May 16th, 1980? How did you do that?

2 MR. TONDRO: May I have the Zoning Administrator answer
3 that one?

4 CHAIRMAN JORDAN: Sure. Certainly.

5 MR. LEGRANT: Yes. In the question of what established
6 the baseline, I looked to what the Applicant represented as
7 the previous uses, and distribution of uses in the cellar and
8 first floor levels. Of course when I looked at this
9 information, I guess I should add, similar to what the
10 Appellants have asserted, there is no information from the 1980
11 timeframe, nor information as to the breakdown of the
12 commercial adjunct and function room square footage in the 1986
13 certificate of occupancy.

14 So in looking at the information that the property owner
15 presented, I walked through those floor plans, to see how the
16 spaces --- how it was asserted, how the spaces were being used.
17 I looked at the configuration of the spaces, and whether they
18 were suitable for guest room uses, as well as what information
19 the property owner could present as to the use of those rooms.

20 At the conclusion of that review, I determined that that
21 information was something that I could reply on as a basis of
22 the representation of the breakdown of those types of uses,
23 not only in terms of how to divide them in to the commercial
24 adjuncts, function rooms, but the guest room areas and service
25 areas.

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1 CHAIRMAN JORDAN: So really was establishing new
2 measurements and new --- new measurements as to what the
3 functional dimensions could be?

4 MR. LEGRANT: Well, I had to look at all the information
5 I had available, and make a determination as to what is the
6 most accurate, or the most reasonable representation of the
7 use of those spaces, and it was presented to me, the history,
8 that at least this property owner knew of the use of those
9 spaces. And also I want to stress of how the layout of those
10 spaces were, how they related to adjacent spaces, where doors
11 were, how they related to corridors, to see if the
12 representation was reasonable as to the breakdown, the
13 categories.

14 MR. MOY: Meaning whether or not that room was actually
15 a banquet room versus a guest room. Is that kind of what you're
16 saying?

17 MR. LEGRANT: Right. For the extent that the plans showed
18 how certain fixtures --- for example, a room that was labeled
19 as a bar, and there was a depiction in the demolition drawings
20 of a feature that appeared to be a bar feature, and so I said,
21 okay, that definitely appeared to be something that was related
22 to a bar --

23 CHAIRMAN JORDAN: A big chandelier that might be in
24 something, looks like a guest room, you say that probably
25 wasn't a guest room. Originally was probably some type of

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1 banquet room or something?

2 MR. LEGRANT: Well, the floor plans I looked at did not
3 depict chandeliers.

4 CHAIRMAN JORDAN: I'm just -- assuming.

5 MEMBER HOOD: May I ask, Mr. LeGrant: Was that
6 information provided to you? Or is this something that the city
7 had on file?

8 MR. LEGRANT: That was provided to me.

9 MEMBER HOOD: By who?

10 MR. LEGRANT: By the property owner.

11 MEMBER HOOD: Okay. Thank you.

12 CHAIRMAN JORDAN: How far back did we --- did DCRA have
13 plans, or C of O on this property?

14 MR. LEGRANT: Well, the District, depending on property,
15 we have C of O's going back to 19 --

16 CHAIRMAN JORDAN: For this property.

17 MR. LEGRANT: For this property, the earliest C of O that
18 I identified, was the 1986 C of O.

19 CHAIRMAN JORDAN: Thank you.

20 And the 1986 C of O would be the same dimensions that
21 you're speaking of, anything associated with the plans for
22 that? Did you find the plans for the --

23 MR. LEGRANT: No. The C of O did not have plans associated
24 with it.

25 CHAIRMAN JORDAN: What was the oldest set of plans that

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1 you may have been able to find?

2 MR. LEGRANT: I'm sorry.

3 CHAIRMAN JORDAN: What was the oldest set of plans that
4 you might have been able to find?

5 MR. LEGRANT: Well, okay. So the plans that --- in the
6 submission for the building permits, they included plans which
7 were labeled as demolition plans, and those depicted the
8 existing condition at the time of the permit, and then as I
9 noted, when I met with the property owner, I said, well, let's
10 walk through those spaces, how they were depicted in those
11 plans, who they were classified, what were their function, how
12 --- what evidence did they have to support the assertion of
13 they were used certain ways, and in a moment, the Intervener
14 has information that I believe the Board's already received,
15 that will --

16 CHAIRMAN JORDAN: And you did a reasonable search and you
17 found no other plans that accompanied this property?

18 MR. LEGRANT: That's correct.

19 CHAIRMAN JORDAN: Okay. Okay. Mr. Tondro, if you want to
20 --

21 MR. TONDRO: Yes. Good morning, Mr. Chairman, and members
22 of the Board. I'll try and keep this brief, since you have
23 already read the brief.

24 Just again, following on the issue of the Zoning
25 Administrator having to work within the regulations, and what

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1 the regulations establish, it is his job, delegated by the
2 zoning regulations themselves, to interpret when and if there
3 are areas that the zoning regulations do not specifically refer
4 to, other --- so, for example, in this particular case, the
5 issue of determining the square footage in existence on May
6 16th, 1980, that is something that is, if there is an absence
7 of determining that there is no clear plan that indicate at
8 that time, then that is something that the Zoning Administrator
9 is effectively delegated to determine.

10 Second of all, I just want to again emphasize that the
11 permit application here specifically called for a reduction
12 in the amount of space dedicated to function room and
13 commercial adjunct space. I just wanted to call out, that there
14 had been something that the Appellants had originally
15 challenged. It appears now they may have dropped it.

16 But I just wanted to reiterate the fact that there is
17 on the cellar floor, post-renovation, there is a, what had been
18 described as a gym, the Appellants reasonable assumed that that
19 may be open to the general public, but it has been clarified
20 that that is actually reserved for hotel guests, and therefore
21 should be limited, should be taken off. It's not a commercial
22 adjunct. It is, rather, something that is a service area, or
23 a guest, guest area.

24 Second of all, in terms of the preexisting uses, and
25 determining their relevance, the issue for the art gallery that

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1 Appellants brought up, whether or not that falls within the
2 definition of commercial adjuncts, I think that here we're in
3 a situation where that's not an exclusive list in the
4 definition and I think you, for example, you can consider their
5 loss of coffee shops, which are specifically referred to, which
6 often have art galleries within them. I don't think this is
7 very far-reaching to say that this would classify as a
8 commercial adjunct.

9 Finally, and building off on that, there's the issue of
10 the commercial offices being used for property management. We
11 do not have any indication that these were not in existence
12 at --- on the date of May 16, 1980, and therefore they may be
13 not conforming uses but they would be grandfathered in as
14 nonconforming uses, and therefore, from the standpoint of
15 looking at 350.4(e), they do not represent --- they would fall
16 in to that category of commercial adjuncts and would not be
17 an increase of space.

18 Finally, just to point out --- I again brought this up
19 in the brief --- but just in terms of the guest rooms on the
20 first floor, the so-called, the asserted guest rooms that
21 Appellants say were reclassified, we have two of them which
22 are without windows, and therefore are basically
23 uninhabitable.

24 You can't use them as guest rooms. That's why they were
25 used as meeting rooms. Another two were connected. The only

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1 way to divide them is with a moveable partition, those big walls
2 that fold up, and there's no fire door. All there is a curtain
3 that connects them to the main meeting room. So it's very
4 clear that these were not able to be used as guest rooms.

5 Perhaps at some time, because there were real
6 kitchenette facilities, so they had been used as guest rooms,
7 but there's no reason to know that that hadn't been in existence
8 prior to 1980. And with that, I'll rest. Thank you.

9 CHAIRMAN JORDAN: Okay. All right. Property owner,
10 please. Property owner, please.

11 MR. EVANS: How much time do you want to give us, Mr.
12 Chairman?

13 CHAIRMAN JORDAN: How long did we take with Mr. Tondro?
14 You're working within a 15 minute window.

15 MR. EVANS: I'll do my best.

16 CHAIRMAN JORDAN: You could go as much as twenty, if we're
17 not going to get redundant.

18 MR. EVANS: Good morning, Mr. Chairman. My name's Philip
19 Evans on behalf of the owner. I want to respond. I'll briefly
20 address some of the legal issues presented by the Appellants,
21 and then I'll turn it over to Mr. Wexler, who's a representative
22 of the ownership, and Mr. Giordano, the architect, to answer
23 some of the questions, trying to focus specifically on the
24 issues that are germane to this appeal.

25 Briefly, on the Motion To Dismiss, there was an

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1 opposition put in last Friday. We haven't responded to that.
2 Only that you have in front of you --- the only thing I have
3 to clearly say is Bannum is not dispositive of the issue here.
4 The later case for the D.C. Court of Appeals in Baskin, and
5 this court's prior --- this Board's prior rulings in Lynch and
6 Ozabel are the precedent you should look to as the timeliness
7 of the appeal.

8 But you have the papers, you've heard the arguments.
9 I'll let you consider that.

10 As to the merits and the substance, I think it should
11 please the Board that we are in agreement, and we are in
12 agreement that 350.4 is what the Board should look at in
13 determining what the scope of work, is permissible under the
14 permits that have been issued. That clearly allows --

15 CHAIRMAN JORDAN: You're in agreement with who?

16 MR. EVANS: The Appellants.

17 CHAIRMAN JORDAN: Okay.

18 MR. EVANS: The 350.4 is what you
19 should be looking at, and that's clear, that deals with
20 apartments --- with hotels that were in existence as of May
21 16th, 1980. And it also makes clear that an existing hotel may
22 be repaired, renovated, remodeled or structurally altered.
23 That's what you have before you.

24 As to commercial adjunct, and function space, it's not
25 that that can't be changed. It just can't be increased. What

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1 we're going to have testimony about today is that the condition
2 of the hotel, as the owner found it when they acquired it, how
3 they identified the commercial adjunct and function space,
4 they came up with a number, they met with the Zoning
5 Administrator --

6 CHAIRMAN JORDAN: What was it on May 16th, 1980?

7 MR. EVANS: There's no evidence to tell anyone what it
8 is. It's quite clear. Everyone has looked back through the
9 records. We know it was an existing permit in a hotel, but
10 there's nothing --- the certificates of occupancy, quite
11 frankly, don't address the zoning regulations. The C of O's,
12 in 1976, and then in two thou --- 1986 --- excuse me --- in
13 2012, I did find as a commercial hotel, with 176 guest rooms
14 and accessory restaurant. That's all they said.

15 So it does not deal with --- the provisions of 199
16 allocate to the five areas before the Board. So as Mr. Tondro
17 said, the Zoning Administrator was charged with looking at the
18 regulations as they're written, using his common sense, and
19 his expertise, as to how to best interpret that, to match the
20 particular restrictions placed on a hotel in a residential
21 district, the R-6 District. There's no question, they want to
22 balance the interests of the hotel, but meet and accommodate
23 the needs of the neighborhood, and keep it restricted.

24 That's what my clients did as they renovated this hotel.
25 So in terms of argument, I think I have largely concluded ---

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1 I'm going to ask Mr. Wexler to describe for you, as the owner,
2 how they approached this and what they found.

3 MR. WEXLER: Good morning, members of the Board. My name
4 is Matt Wexler. I'm a principal of CS Bond Street, the owner
5 of the Carlyle Hotel, the subject property, and the holder of
6 the building permit being challenged in this matter.

7 The Carlyle is owned by an entity affiliated with my
8 firm, Foxhall Partners, a Washington, D.C.-based development
9 firm that specializes in hotel renovations in mixed-use
10 neighborhoods in the District of Columbia.

11 We have three active hotel projects in the District
12 today. We specialize in the adaptive re-use of properties,
13 especially buildings such as the Carlyle, located in historic
14 districts.

15 We first looked at the hotel in the fall of 2012, and
16 closed on its purchase in December of 2012. We purchased the
17 property from the prior owner, an entity called Trentuno
18 Limited Partnership.

19 As part of due diligence, we closely examined the
20 physical layout of the hotel, and conducted interviews of the
21 prior management company to learn of the hotel's history and
22 operations.

23 When we bought the hotel, we were going to start in the
24 cellar, and Pete, do you want to pull up the plans.

25 Most of the cellar, at that time, was devoted to service

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1 areas for the hotel: mechanical equipment, housekeeping, the
2 engineer's office, and some administrative and guest room
3 support, back-of-house space.

4 Another large area of the cellar, again at that time,
5 December 2012, was used as commercial office space. This
6 office space served as the U.S. headquarters for the hotel's
7 previous third-party management company, Great Addresses, who
8 managed several hotels in the District and in Florida. There
9 was also the offices of SBS International, and other entities
10 completely unaffiliated with the administrative operations of
11 the Carlyle Hotel.

12 One of the former principals of Trentuno, Matthew
13 Mezzanotte, ran other real estate businesses, including a
14 sizeable local portfolio --

15 CHAIRMAN JORDAN: Excuse me. The Trentuno --- is that the
16 previous owner?

17 MR. WEXLER: Yes. That's the entity --

18 CHAIRMAN JORDAN: Did they own it on May 16th, 1980?

19 MR. WEXLER: Yes. Matthew Mezzanotte ran other real
20 estate businesses, including a sizeable local portfolio of
21 loans and rental residences.

22 In the Washington Post, October 2014 obituary of
23 Mezzanotte, the paper describes him as a prominent real estate
24 developer, and one of the leading builders of Fort Washington,
25 Maryland.

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1 In the terms of our purchase and sale agreement for the
2 hotel, it was made clear that there were business records in
3 this space which were not part of the sale -- and this space
4 meaning the cellar space -- and boxes of records were removed
5 after we acquired the hotel.

6 It's also worth mentioning that there was a variety of
7 storage spaces in the cellar and basement back in the 1980s,
8 and again, we don't have plans dating back to May 6th, 1980.

9 But we understand that back in the 80s, that some of that
10 storage space was utilized, my partners have been told --

11 CHAIRMAN JORDAN: Let me ask another question. So you
12 interviewed the previous owner who owned the property on May
13 16th, 1980. You then did some extrapolation from those
14 conversations, what was the use of space and how it was used?

15 MR. WEXLER: Correct.

16 CHAIRMAN JORDAN: Did you then get a statement from them,
17 that you submitted to DCRA, to validate what your suspicions
18 would be --- were?

19 MR. WEXLER: Not a statement from them. Not a direct
20 statement from them.

21 CHAIRMAN JORDAN: Nothing in writing or anything like
22 that?

23 MR. WEXLER: No. So my partners have been told that back
24 in the 1980s, that a portion of the cellar or basement was
25 actually used by the old Jimmy's Deli for its dry storage.

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1 Jimmy's Deli was, you know, a restaurant located in the Carlyle
2 Hotel back in the 1980s and 90s.

3 There was an existing small kitchen at the northwestern
4 corner of the ground floor, and that kitchen was also
5 immediately facing New Hampshire Avenue, and also two
6 restaurant and bar spaces. One connected to the kitchen that
7 looked like a retro diner, and the other situated in between
8 various flexible and meeting spaces along the entire southern
9 end of the ground floor, between New Hampshire Avenue and the
10 property's back surface area.

11 I'm now on the ground floor of the hotel, of the existing
12 conditions as of December 2012.

13 CHAIRMAN JORDAN: We had kitchen and deli on the basement
14 floor. We had mechanical equipment, and mechanical stuff on
15 the second.

16 MR. WEXLER: The deli I was referring to, there was a
17 restaurant called Jimmy's Deli, back in the 1980s, that was
18 located on the ground floor, and we understand there was dry
19 storage for that operation inside the basement. But again,
20 that's back in the 1980s and 90s, and we don't have any records
21 or plans about.

22 CHAIRMAN JORDAN: Got it. Okay.

23 MR. WEXLER: Back to the ground floor as of December 2012.
24 There were a number of function rooms, and that includes four
25 small rooms towards the rear of the property, and those are

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1 known as the Dupont Rooms, as well as the Kalorama Room, which
2 fronted New Hampshire Avenue.

3 The Dupont rooms were used as conference and meeting
4 rooms. We've submitted some photos in to the record of those
5 rooms.

6 Janelle Cash, who has been a member of the sales team
7 for the Carlyle for well over a decade, provided me with records
8 that we also submitted in to the record, showing those rooms
9 as conference rooms going back a number of years. We did submit
10 those records also to DCRA.

11 During our due diligence, we learned that those four
12 Dupont Rooms could not possibly have been guest rooms because
13 of various code reasons. The accordion air wall. There were
14 no windows, insufficient fire rating, et cetera, et cetera.

15 And it was our understanding that prior to our
16 ownership, that they were also not used as guest rooms. After
17 all, it would have been illegal to use them as guest rooms in
18 such a manner.

19 There was also a massage room, as well as an office on
20 the ground floor, that was utilized by the hotel as overflow
21 meeting space and also ancillary office space.

22 I'm going to speak briefly to our renovation plan.
23 During our due diligence, we concluded the hotel was in dire
24 need of renovations. While structurally the property was in
25 good shape, the hotel simply did not meet modern market

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1 standards, and hadn't been upgraded in many years.

2 The hotel also did not meet code or fire and life safety
3 standards. We became aware that we would need to invest
4 significant capital to renovate and to upgrade the property.

5 The guest rooms, which had not been refurbished since
6 the last century, needed to be modernized to fit current hotel
7 guest market requirements.

8 The lobby and the hotel's public spaces need to be
9 updated consistent with the requirements of the standards of
10 the property's new management company, and the needs of guests
11 in 2015.

12 The property's kitchen and restaurant also required
13 significant improvements, and an increase in size, frankly.
14 Both to serve hotel guests, and as the operation had increased
15 in popularity over the prior several years before ownership,
16 the immediate Dupont Circle neighborhood, and also to avoid
17 outside food delivery, a practice which had actually been
18 employed by the hotel's prior third-party food and beverage
19 operator for larger events.

20 The existing kitchen cooking space in the hotel was not
21 much larger than say your typical Dupont Circle residential
22 townhouse kitchen. I can point to an area here where the
23 previous kitchen was located.

24 Finally, the meeting spaces were antiquated and lacked
25 modern function space amenities, such as audiovisual

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1 technology.

2 In late 2012, and in to early 2013, our team engaged
3 design and zoning and land use experts to help us begin planning
4 for the comprehensive renovation of the hotel.

5 We understood that since the hotel was located in a
6 residential area, we cannot expand the overall footprint of
7 the hotel, nor could we increased the square footage allocated
8 to commercial adjunct function and exhibit space. But we could
9 shift square footage between these same categories.

10 This was challenging, given the needs of a hotel in 2015,
11 but we worked with our team to identify areas where we could
12 create better meeting space in the property's basement without
13 disrupting operations and the existing back-of-house
14 functions in the hotel.

15 We also engaged GTM Architects to create what we call
16 as-built plans for the property, given that there were no
17 existing building plans or construction drawings for the New
18 Hampshire Avenue property built back in the late 1930's.

19 And these as-built plans are those that reflect the
20 condition of the property as of December 2012, and are those
21 that our architect, Nick Giordano, will describe next, that
22 were shown in what the Appellants described as the demolition
23 plans, that they utilized for their purposes.

24 We further engaged GTM Architects to perform a survey
25 of the existing uses of the property as of spring 2013, so we

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1 could understand exactly how much square footage we had to work
2 with, and a third set of drawings showing a possible new layout
3 for the hotel. Please note that these drawings were not
4 actually used for actual construction.

5 We used the GTM drawings to meet with the Zoning
6 Administrator back in June 2013. The result of that meeting
7 was the ZA approval letter of July 24, 2013. The ZA letter
8 gave us a total of 12,064 square feet of combined commercial
9 adjunct and function space in the cellar and the first floor.

10 After we understood what we could do in terms of zoning,
11 that's when we began the formal design process. We engaged BBGM
12 --- that's Nick --- in the summer of 2013, to help us with that
13 process.

14 Late in the summer of '13, and continuing throughout the
15 fall, we also began extensive discussions with ANC 2B and the
16 hotel's immediate neighbors about our proposed work. In the
17 spirit of open dialogue, we hosted at least five meetings
18 inside of the old Dupont Rooms meeting space at the hotel, on
19 both midweek evenings and weekend avenues, to provide an
20 overview of the renovation plans, and to discuss specifically
21 our application to the Historic Preservation Review Board.

22 You'll also note that many of the Appellants in fact
23 attended at least one of those community forums that were held
24 inside of the meeting rooms ---- the old meeting rooms, that
25 they can attest were in fact not meeting rooms.

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1 CHAIRMAN JORDAN: Let me help you. I really think going
2 in to the communication, this time when they had notice ---
3 save yourself some time on that.

4 MR. WEXLER: Sure.

5 CHAIRMAN JORDAN: I think if we can get to the substantive
6 points. You don't have to, but I would just suggest that you
7 --

8 MR. WEXLER: Thank you. In 2014, we worked extensively
9 with BBGM to create final design plans in order to apply for
10 building permits. Those drawings actually show less
11 commercial adjunct and function space than what was approved
12 in the ZA's letter.

13 The total amount of commercial adjunct and function
14 space, as Nick will describe next, is permitted and being
15 constructed, is 8552 square feet.

16 I also want to note that the amount of
17 administrative-serving office space in the renovated Carlyle,
18 which is 198 rooms -- and that reopened for business a number
19 of weeks ago -- is approximately 903 square feet.

20 Again, that's the amount of administrative-serving
21 office space in the now-renovated Carlyle that's managed by
22 Kimpton Hotels. And that 903 square feet does not include the
23 small ground floor office located behind the reception desk.

24 Kimpton Hotels, the Carlyle's management company and
25 the hotel operator, has its administrative-serving employees

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1 for the hotel in all of those 903 square feet.

2 Kimpton operates many other hotels in the District of
3 Columbia, including several within blocks of Dupont Circle,
4 like the Carlyle, and 903 square feet is in the mid-range and
5 comparable to the amount of square feet devoted to
6 administrative functions for similar Dupont Circle,
7 Kimpton-operated hotels that lack large ballroom spaces like
8 the Carlyle.

9 The 903 number --

10 CHAIRMAN JORDAN: All renovations are completed and the
11 hotel's operating. Is that what --

12 MR. WEXLER: The renovations for the guest rooms have
13 been completed. That's correct. The renovations for the public
14 spaces are not yet completed.

15 CHAIRMAN JORDAN: All right. And so it's not open for
16 business?

17 MR. WEXLER: The hotel is open for business. The hotel
18 -- the 198 guest rooms are open for business, yes.

19 CHAIRMAN JORDAN: Go ahead, please.

20 MR. WEXLER: The 903 square foot number contrasts sharply
21 to that provided by the Appellants, who perhaps did not know
22 that the commercial office space previously in the Carlyle's
23 basement, under prior ownership, housed a variety of entities
24 that were unaffiliated with the administrative functions of
25 the hotel.

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1 I want to conclude, briefly, by letting the Board know
2 that even during this appeal, we have continued to work with
3 neighbors, including several of the Appellants themselves, to
4 address concerns about any hotel operational issues that may
5 impact the residential community.

6 We've even taken the unusual step of offering to enter
7 in to an agreement that would become attached to our liquor
8 license, and address matters such as trash pickup, guest
9 parking, hours of operations, and the other issues that Mr.
10 Sawicki described.

11 And this step of offering to enter in to such an
12 agreement, this happened at a time when the ABC Board has
13 already ruled that our renovation-related changes to the
14 interior of the hotel do not require the substantial change
15 placarding process.

16 It goes without saying that while we believe the appeal
17 at hand lacks merit, we want the Carlyle to become a welcome
18 neighbor as it has been over the years. As a firm, we work
19 closely with community groups and neighbors, and try to be as
20 responsive as possible to their interests.

21 We have been before this Board in the past, and we have
22 a reputation in many D.C. neighborhoods for collaborating with
23 community leaders to craft win-win agreements resolving
24 sometimes contentious issues.

25 Despite our proactive efforts to engage them directly

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1 about the substantive issues raised in this appeal, neither
2 of the lead Appellants has wanted to meet or even talk with
3 me about this appeal.

4 We will continue to work with neighbors
5 collaboratively, and I'm quite confident that our various
6 meetings over the past few months will prove fruitful. Thank
7 you.

8 CHAIRMAN JORDAN: Board, any questions?

9 (No response)

10 CHAIRMAN JORDAN: Then let's turn to the Appellants for
11 a five minute rebuttal and closing.

12 MS. CALDERON: I'm not certain that there is any need to
13 rebut. We know that they're asking for less commercial adjunct
14 and function room space than was --

15 CHAIRMAN JORDAN: One second. Mr. Moy. Clock. A five
16 minute rebuttal and closing, so it can be wrapped up in one.
17 All right. Thank you. Please.

18 MS. CALDERON: I know there's, there's less restricted
19 space than the Zoning Administrator's letter I think said ---
20 12,000 some plus square feet. So there is less, and that's
21 understood. The question is whether there's more than is
22 allowed under Section 350.4(e).

23 I think the factual resolution that we came up with in
24 addressing the hotel, as it existed for purposes of 350.4(e)
25 was about the best we could come up with. And I think that the

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1 resolution the Zoning Administrator came up with, taking it
2 prior to the permit, just opens up that big period between when
3 the owner -- the new owner bought the building, and when they
4 sought the permit, to make changes that don't require permits
5 and say that's the amount of commercial restricted space that
6 was there.

7 So with that, I think I'll --

8 MR. SAWICKI: I'll make a couple comments, --

9 MS. CALDERON: Yes.

10 MR. SAWICKI: --- if I may.

11 Just three quick points or questions. The 1986
12 certificate of occupancy and the 2012 certificate of occupancy
13 states that the hotel has 176 rooms. The owner's documents,
14 that they shared with the Zoning Administrator, claims 167
15 rooms.

16 So rooms vanished. Nine rooms vanished somewhere. We
17 tried to find where they went. We couldn't find official
18 documents, so we relied on owner's documents that showed rooms
19 that were previously configured as guest rooms. Where else
20 would the nine rooms go? That's my first comment.

21 Second question. The Zoning Administrator stated that
22 he walked through the hotel with the owner. I would like him
23 to clarify if he actually physically inspected the property
24 before making his ruling.

25 CHAIRMAN JORDAN: You said the Zoning Administrator?

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1 MR. SAWICKI: Yes.

2 CHAIRMAN JORDAN: I think --- did you go out there?

3 MR. LEGRANT: No, no.

4 CHAIRMAN JORDAN: Okay. All right. Okay.

5 MR. SAWICKI: And lastly, I'm just noting that the Zoning
6 Administrator's ruling on the before and after conditions are
7 based exclusively on drawings provided by the owner.

8 CHAIRMAN JORDAN: I think he's already said that.

9 MR. SAWICKI: Okay. Thank you.

10 CHAIRMAN JORDAN: All right. Yes?

11 MS. CALDERON: I just would like to point out that there
12 is a partner of the former owner who is alive and available
13 to you, should you wish to question that owner.

14 CHAIRMAN JORDAN: Okay. Thank you. Is that it?

15 Well, then we will conclude this matter, based upon the
16 file and record in this hearing. I'm going to suggest to the
17 Board that we request --- that the parties submit a Proposed
18 Finding of Facts and Conclusions of Law. That we place this
19 on, for decision, on Mr. Hood's date in September --- what is
20 that? September 1st?

21 MR. MOY: September 15, sir.

22 CHAIRMAN JORDAN: September 15th. Mr. Moy, do you want to
23 give them --

24 MR. MOY: September 15th. Perhaps the parties submit their
25 findings a week in advance. Let's make it Monday, September

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1 7th.

2 CHAIRMAN JORDAN: Okay. Got it. And then we put it on for
3 decision on September 15. So you need to provide the Board
4 Proposed Findings of Facts and Conclusions of Law.

5 MEMBER HOOD: Mr. Chairman, can I just --- Mr. Sawicki,
6 there's an organization in the District government called
7 SWEEP. You might want to give them a call and they'll take
8 care of this.

9 MR. SAWICKI: We already have.

10 MEMBER HOOD: Oh, okay. Good.

11 CHAIRMAN JORDAN: So we thank you all, and the Board would
12 take a five minute recess before we proceed to our next case.
13 Thank you.

14 (Whereupon, the above-entitled matter went off the
15 record and resumed following a brief recess.)

16 CHAIRMAN JORDAN: All right, let's call the next one.

17 MR. MOY: Thank you, Mr. Chairman. The next
18 application before the Board for public hearing is Application
19 No. 19034. This is the application of Industrial Bank of
20 Washington as captioned for public notice for a variance from
21 the use requirements under Section 330.5. This is property at
22 premises 1931 11th Street, N.W.

23 CHAIRMAN JORDAN: Please identify yourselves.

24 MR. MITCHELL: I'm B. Doyle Mitchell, president and CEO
25 of Industrial Bank, which is the owner/Application.

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1 MS. JOHNSON: I'm Elduise ---

2 CHAIRMAN JORDAN: Your microphone, please.

3 MS. JOHNSON: I'm Elduise Johnson, internal counsel for
4 Industrial Bank.

5 MR. EPPS: I'm Rodney Epps, chief information officer and
6 senior vice president, Industrial Bank.

7 MR. JONES: I'm Jimmy Jones, project architect for the
8 project.

9 MR. TESHOME: My name is Joseph Teshome.

10 CHAIRMAN JORDAN: I'm sorry. Your name again?

11 MR. TESHOME: My name is Joseph --

12 CHAIRMAN JORDAN: Is your microphone on?

13 MR. TESHOME: My name is Joseph Teshome. I'm from Avenue
14 Parking.

15 CHAIRMAN JORDAN: Shome? Teshome?

16 MR. TESHOME: Teshome.

17 CHAIRMAN JORDAN: Teshome.

18 MR. TESHOME: Teshome.

19 CHAIRMAN JORDAN: Okay. To my left?

20 MS. SULLIVAN: I'm Commissioner Ellen Sullivan, ANC
21 Commissioner for 1B-02. I'm representing ANC 1B.

22 CHAIRMAN JORDAN: Okay.

23 MR. BOERTLEIN: My name is Neil Boertlein, and I'm the
24 owner and resident of 1930 11th Street, N.W., a house directly
25 across the street from the lot being discussed.

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1 CHAIRMAN JORDAN: Okay. All right. We've got some
2 procedural issues with this case.

3 One, there's --- I haven't seen the affidavit of
4 posting. Has that been filed? The affidavit of posting?

5 MR. MITCHELL: Affidavit? Have you posted the --- yes.
6 Yes. It is.

7 MS. JOHNSON: I do need to clarify that Industrial Bank
8 did not handle the processing and submission of the
9 application, but we did authorize it.

10 So I just wanted to clarify that, logistically, the
11 documents that had been submitted were submitted on our behalf
12 through previous counsel.

13 CHAIRMAN JORDAN: Okay, gut I need an affidavit of
14 posting. There's not one in the file. Is that right, Mr. Moy?

15 MR. MOY: My understanding is there are photographs, Mr.
16 Chairman.

17 CHAIRMAN JORDAN: But no affidavit submitted. When was
18 the posting done?

19 MR. TESHOME: It was in June. I believe June 2nd.

20 CHAIRMAN JORDAN: June 2nd?

21 MR. TESHOME: The first, or June 2nd.

22 CHAIRMAN JORDAN: June 2nd. Okay. And it's been up
23 continuously?

24 MR. TESHOME: Yes.

25 CHAIRMAN JORDAN: Okay. Do we have a site plan in the

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1 file? Has OP sent a site plan? Is a site plan --- is there one
2 in our file?

3 MR. TESHOME: Yes. Yes, we do. We are submitting them now.

4 CHAIRMAN JORDAN: You're doing what now?

5 MR. TESHOME: Site plan.

6 MR. MITCHELL: It was recommended that we not upload it
7 because the zoning office had already submitted their file,
8 and that we bring them to the meeting, by Mr. Booker.

9 CHAIRMAN JORDAN: That doesn't sound --- Mr. Moy, come
10 here a second.

11 MS. JOHNSON: I do believe we have site plans that we can
12 submit to the Board.

13 CHAIRMAN JORDAN: Okay. Who's Mr. Booker? Where is he?
14 Where was he located?

15 MR. TESHOME: One second.

16 CHAIRMAN JORDAN: And then let me also ask: What was the
17 affidavit of posting --- what was posted? Was this for a
18 variance or a special exception?

19 MR. TESHOME: Special exception.

20 CHAIRMAN JORDAN: It was posted for special exception?

21 MR. TESHOME: Yes.

22 CHAIRMAN JORDAN: Okay.

23 MS. JOHNSON: I believe the initial application
24 requested a variance, and the Office of Zoning subsequently
25 decided that the proper application -- the Office of Planning

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1 --- I'm sorry --- subsequently decided that the appropriate
2 application would have been for a special exception.

3 CHAIRMAN JORDAN: All right. So we're going to need you
4 to submit the affidavit of posting for the file. We're going
5 to need the site plan filed.

6 MR. TESHOME: We have them. May we submit them now?

7 CHAIRMAN JORDAN: You're going to have to do it after the
8 hearing.

9 MR. TESHOME: Okay.

10 CHAIRMAN JORDAN: But it gives some aspect of concern.
11 What else did I ask? All right.

12 So all right. Let's proceed. What we do have here? You
13 have a request for a special exception. I understand the
14 condition of this property is pretty bad.

15 MR. MITCHELL: If I may, Mr. Chairman. Industrial Bank
16 has been in existence since 1934, and this particular lot has
17 been operated as a parking lot, probably since about 1948, and
18 we have --- we were told --- we leased the lot to Mr. Gresham,
19 and --

20 CHAIRMAN JORDAN: Well, does Industrial Bank own the lot?

21 MR. MITCHELL: Industrial Bank owns the lot. What we did
22 is we authorized the filing of the application to the tenant,
23 and the tenant filed the applications. There were a couple of
24 inaccuracies, including the ownership of the lot, which was
25 listed as our former general counsel. But Industrial Bank

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1 does own the lot. We've operated the lot, and owned that lot
2 for -- for decades.

3 CHAIRMAN JORDAN: All right. So it's going to remain a
4 parking lot for use of the bank?

5 MR. MITCHELL: It will remain --- during the day, the lot
6 is used by the bank on occasion. Primarily, it's also --- we
7 sublease some of the spaces to Lee's Flower and Card Shops,
8 and a couple of other businesses in the neighborhood.

9 At 6:00 p.m., we lease the lot to --

10 MS. JOHNSON: Avenue Parking.

11 MR. MITCHELL: Avenue Parking. I'm sorry.

12 CHAIRMAN JORDAN: So has there been a --- is there a
13 current C of O on this, that allows the parking lot to be used?
14 The space --- this property to be used as parking.

15 MR. MITCHELL: I'm not --

16 MS. JOHNSON: No. That's part of the application, and
17 part of the recommended approval from the Office of Planning.

18 MR. MITCHELL: They operated the lot after 6:00, and it
19 was pointed out by the Department of Consumer and Regulatory
20 Affairs, that there were a number of exceptions to the
21 operation of the lot, at which time --- this was about a year
22 and a half ago --- they stopped operating the lot, and that
23 has caused some of the concerns coming from the neighborhood,
24 which we intend to address.

25 We have spoken to Ms. Sullivan here, and we intend to

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1 address all the conditions of the lot. We just need to formally
2 have the lot provided a special exception, because half of the
3 lot is R-4, half of the lot is commercial.

4 CHAIRMAN JORDAN: All right.

5 MS. JOHNSON: And if I may add, that with all due respect,
6 even though this doesn't go to the issue, our general counsel
7 retired within the last 60 days, and I've stepped in to his
8 shoes.

9 We just received notice of the zoning hearing last week,
10 and so we have --- as soon as we received notice, we did take
11 steps to immediately reach out to the ANC to address the
12 concerns. We've visited the parking lot.

13 We acknowledge that there are significant improvements
14 that are needed, and we just wanted to make sure we were present
15 today to make sure we went on record to support the application,
16 and express our support for the application and our support
17 for the recommendations from the Office of Planning.

18 CHAIRMAN JORDAN: All right. Board, any other questions
19 of this applicant?

20 (No response)

21 CHAIRMAN JORDAN: Well, I mean, there are several things.
22 One. Evidently this lot is a wreck, is what I'm understanding
23 from reading the record. That it's not being maintained.
24 There's no landscaping.

25 What about lighting on the parking lot? How is that

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1 maintained?

2 MR. TESHOME: It has been properly -- working properly
3 for quite some time now.

4 CHAIRMAN JORDAN: What about the landscaping and the
5 trash and debris, and all that? How has that been taken care
6 of?

7 MR. TESHOME: We have been maintained for a year and a
8 half now, since we told we cannot work after 6:00.

9 CHAIRMAN JORDAN: So you haven't done anything to the
10 lot. I understand. Prior to that, what was it like?

11 MR. TESHOME: Because the lot --- the lot was paved, it
12 has a line on it, and it was working perfectly fine. We used
13 to maintain it with maintenance, and all that, while we were
14 there working.

15 CHAIRMAN JORDAN: Well, prior to that it was a problem
16 also. I remember from your first application, the first
17 application that was filed some time ago, that we dismissed
18 for failure to prosecute, there was objection to it because
19 of the condition of this lot.

20 MR. TESHOME: I'm not aware.

21 CHAIRMAN JORDAN: Yes, please.

22 MS. JOHNSON: We did visit the property last Friday, and
23 in all honesty, there was no debris, there was no trash.

24 There is need for landscaping, and there is need to keep
25 the gate closed, but the description that we read in the letters

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1 -- in the letter written from ---- by the ANC, it didn't ---
2 we were surprised that when we visited, it wasn't as bad as
3 it was represented to be.

4 However, we did recognize that it didn't match the
5 standard that we have for our parking lot on the next lot, and
6 we acknowledge that some improvement is needed.

7 But there was no trash. There was no debris. There was
8 no smell of urine. So I don't think that that's necessarily
9 an accurate representation, at least from my personal
10 observation.

11 CHAIRMAN JORDAN: Go ahead.

12 MR. MITCHELL: The fences do need repair, and we need to
13 upgrade our monitoring of the lot, and the landscaping does
14 need to be improved.

15 CHAIRMAN JORDAN: Board, any other questions?

16 MEMBER HOOD: Yes. So Mr. Mitchell, you have discussed,
17 as you stated, I guess with the community, some of the things
18 you're going to try to do to improve it.

19 MR. MITCHELL: Yes.

20 MEMBER HOOD: Who else uses that lot?

21 MR. MITCHELL: Well, one of the problems, just to be quite
22 honest -- and we're going to correct this immediately, is that
23 monitoring of the lot during the day does not exist, and while
24 we lease two spaces to our --- the owners of the property next
25 door, and four spaces to Lee's, it's not -- it's not properly

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1 monitored during the day, which we will improve, and frankly,
2 cars come in to go to various businesses, park there during
3 the day.

4 MEMBER HOOD: So you're not thinking of discontinuing the
5 use for like the Lee's, or anything like that?

6 MR. MITCHELL: No. We think --- we believe that, you know,
7 the businesses that we lease the lot to during the day, they
8 need it. You know, they have vans that make deliveries, and
9 so forth.

10 Then at night, we think it's a public service, that it
11 takes cars off the street, and can be useful for the businesses
12 and the residents, down there in the evening. It just needs
13 to be managed.

14 MEMBER HOOD: Okay. Yes. It needs to be tightened up
15 because I know --

16 MR. MITCHELL: Yes.

17 MEMBER HOOD: --- with Lee's, and Industrial --- well,
18 on U Street for years.

19 MR. MITCHELL: Yes.

20 MEMBER HOOD: So you just need to tighten that up. But
21 I'll be looking forward to hearing from the community.

22 MR. MITCHELL: Sure.

23 MEMBER HOOD: Thank you, Mr. Chairman.

24 CHAIRMAN JORDAN: All right. Board, any other questions?

25 (No response)

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1 CHAIRMAN JORDAN: All right. So let's go to the Office
2 of Planning, please. And we're aware of your report, if you
3 just want to --

4 MR. MORDFIN: All right. Good morning, Chair, members of
5 the Board.

6 The Office of Planning recommends approval of this
7 application, subject to the conditions that are within the
8 report.

9 One of the conditions is that the approval be for one
10 year, and that is to give the Applicant the opportunity to bring
11 the lot up to standards, so that it is not viewed as a nuisance
12 by the neighborhood or by the ANC.

13 And Office of Planning assumed that one year would be
14 sufficient time to make the improvements that are necessary,
15 since there's no building construction that are a part of this.
16 And that is the rationale behind the Office of Planning's
17 recommendation for a one year approval.

18 CHAIRMAN JORDAN: And what renovations or what
19 improvements do you see as necessary?

20 MR. MORDFIN: Well, the pavement --- I think they need
21 to assess the pavement, where there are holes in the pavement.
22 Repair those, however is appropriate. They need to put in the
23 landscaping. There is no landscaping there today.

24 CHAIRMAN JORDAN: Let me ask. Is it similar to what is
25 in DDOT's letter? What DDOT has -- that they need to submit

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1 certainly a site plan with the stripping, and the signage and
2 landscaping. That they replace the fence, repair the broken
3 and damaged paving.

4 MR. MORDFIN: Yes. All of those things, I'm in agreement
5 with what DDOT has written.

6 They have reviewed this plan. I did send them a copy of
7 it. So they have seen this site plan.

8 CHAIRMAN JORDAN: Board, any other questions of
9 Planning?

10 The Applicant, any questions of Planning?

11 MEMBER HOOD: I do have a question. Typically, when we
12 give an organization or a group of people a chance to get
13 theirselves together, normally, we do two years. Why are we
14 just doing one year?

15 MR. MORDFIN: Typically, we do more when you have to
16 outfit something. We do it with day care centers where there's
17 a lot of construction, and things that have to be done. This
18 is a parking lot.

19 MEMBER HOOD: Right.

20 MR. MORDFIN: And so the work that needs to be done is
21 much simpler. You know, repaving the lot or patching the lot.
22 If they have to fix the fence, fix the fence. And putting in
23 shrubbery.

24 And the other conditions that we put in there, that, you
25 know, that they keep the gate closed, that there be no

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1 loitering. Those things don't take any time to do. They can
2 just be done.

3 So that was the idea behind that. That they should be
4 able to accomplish it within one year, and also that because
5 of comments we've gotten from the community, that right now
6 it is a nuisance, and if we give them two year and they don't
7 do any of this, then ---- I think they should be able to
8 accomplish it in one year, and if they can't accomplish it in
9 a year, then --

10 MEMBER HOOD: Right. I understand. I know in previous ---
11 this is the first time I've seen a situation like this --- we've
12 given a little more time than that, and we'll deal with
13 that later. Okay. Thank you.

14 MS. JOHNSON: Excuse me. Mr. Mordfin, can you please
15 explain to us the procedure for --- we need clarification on
16 what the approval for one year means.

17 CHAIRMAN JORDAN: That means you would have to come back
18 to the Board to continue beyond one year.

19 So if we approve it, you will get a C of O for one year,
20 conditional, and you have the requirements to do various
21 things. So it gives the community --- it's a road bump --- so
22 making sure that you've improved the property, so the community
23 has an opportunity to come back and let us know if things are
24 improved or not, or government come back and say it's improved
25 or not, and if it's not improved, then we would not allow you

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1 to go forward.

2 MS. JOHNSON: Okay.

3 CHAIRMAN JORDAN: That's generally --- it's a road bump.

4 MR. MITCHELL: Mr. Chair, we've operated in the community
5 for a very long time, and it --- we actually intend to make
6 those improvements, post haste.

7 I mean, it will not take one year for us to bring the
8 property up to the standards that the community and Industrial
9 Bank expect.

10 CHAIRMAN JORDAN: Board, any other questions of
11 Planning? Anyone, questions of Planning?

12 (No response)

13 CHAIRMAN JORDAN: Anyone here from Department of
14 Transportation on this case?

15 (No response)

16 CHAIRMAN JORDAN: We do have a letter from Department of
17 Transportation, which has no objections, subject to the
18 conditions that the Applicant agrees to submit the site plan
19 with the parking layout, including stripings, and the arrows
20 and signage, and landscaping and lighting. That they replace
21 the fence along the public alley with an operable gate
22 circulation, that you replace the broken and damaged paving.

23 You're familiar with that, and that you don't have a
24 problem with those --

25 MR. TESHOME: We have site plans calling for all of that,

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1 right?

2 MR. MITCHELL: I'm sorry. The last part was replace the
3 broken and damaged --

4 CHAIRMAN JORDAN: Pavement.

5 MR. MITCHELL: Oh, okay. Yes.

6 CHAIRMAN JORDAN: Let's turn now to ANC 1B, with
7 Commissioner Sullivan, to bring us up --

8 MS. SULLIVAN: Thank you. I'd like to start first with
9 a question about the affidavit of posting.

10 As stated, I met with the applicants on Friday of this
11 last week. I do not believe that anything was posted at that
12 time. I also question if it was posted, because they say they
13 didn't know that they had a hearing.

14 If they are closely monitoring the site, which is
15 catty-corner from their building, how did they not see a large
16 orange sign on their gate for a month?

17 So, to me, this adds to the concerns that the
18 neighborhood has with Industrial Bank running this parking
19 lot. It is not well-looked at.

20 CHAIRMAN JORDAN: And so you have not seen a --

21 MS. SULLIVAN: I believe I saw it go up this weekend, or
22 maybe on Monday.

23 MR. MITCHELL: The sign was there on Friday.

24 MS. JOHNSON: The sign was there on Friday, and when we
25 say we were not aware, we're saying that the executive

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1 management team was not aware of the concerns.

2 CHAIRMAN JORDAN: But here's the thing. There's
3 procedural requirements under the law regarding posting. It's
4 not whether you knew or didn't know. It's whether or not it
5 happened or didn't happen, so --

6 MS. SULLIVAN: The ANC would highly request that we look
7 into the affidavit of posting since that is in question.

8 CHAIRMAN JORDAN: Who posted?

9 MR. TESHOME: I did. I did it twice, actually.

10 CHAIRMAN JORDAN: When did you post it?

11 MR. TESHOME: On the 1st, June 1st, and --

12 CHAIRMAN JORDAN: And how long did the sign stay up?

13 MR. TESHOME: When I went to, about 10 days ago, it was
14 somebody pulled out, I mean took it --

15 CHAIRMAN JORDAN: Okay.

16 MR. TESHOME: So I put it --- got again.

17 CHAIRMAN JORDAN: Okay. So that's a problem. It's
18 required of the application to maintain that it's there, and
19 maintenance it.

20 So if it comes down, they've got to go get another one
21 and put it back up.

22 MR. TESHOME: Yes. I got another one, right away.

23 CHAIRMAN JORDAN: And when did you put it back up?

24 MR. TESHOME: I'm sorry?

25 CHAIRMAN JORDAN: When did you put it back up?

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1 MR. TESHOME: When?

2 CHAIRMAN JORDAN: Yes. When?

3 MR. TESHOME: About 10 days ago.

4 CHAIRMAN JORDAN: And it stayed up for 10 days?

5 MR. TESHOME: Yes.

6 CHAIRMAN JORDAN: How many days, total has that sign been
7 up?

8 MR. TESHOME: For the last 30 days, I believe.

9 CHAIRMAN JORDAN: So from the time they pulled it down,
10 someone pulled it down, it was up for 30 days?

11 MR. TESHOME: I don't believe that between how many days
12 that it have been taken out. But I saw it on 15 days, two weeks.

13 MEMBER HOOD: About how many days was it down?

14 MR. TESHOME: About 21 days --

15 CHAIRMAN JORDAN: All right. This is what we're going to
16 do. Let's --- I think we're getting ready to start this over.

17 I'm real concerned about the representation made to the
18 Board. I understand there's different people, and whatever
19 happened. But the affidavit of posting is so important for the
20 neighborhood to be able to understand where we are, what's
21 going on with the process. Okay?

22 I'm not finding very credible -- I'm going to be very
23 direct, what you've been saying in regard to very direct
24 questions about it. Let's proceed through the hearing.

25 We're going to decide what happens at the end. But I'm

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1 telling you, right now, I'm not really comfortable with the
2 affidavit of posting. I don't think the Board is comfortable
3 with the affidavit of posting, and I'm hearing the ANC raise
4 this other issue --- who's normally may in the community may
5 not have seen this thing, this sign up. Okay?

6 So it might have even been up the day that the Industrial
7 Bank got there, but it may not have been there, because you're
8 not there every day.

9 MR. MITCHELL: Right.

10 CHAIRMAN JORDAN: So let --Commissioner, continue.
11 Proceed.

12 MS. SULLIVAN: Thank you. I appreciate it. I'd like to
13 start by reading the letter that was submitted by the ANC. I
14 feel it best summarizes our case.

15 Dear Chairman Jordan, on June 4th, 2015, ANC 1B voted to
16 oppose the BZA Application 19034, for 1931 11th Street, N.W.,
17 Washington, D.C. 20001. The meeting was properly noticed, with
18 a quorum of 11 of 12 Commissioners present, and the vote was
19 unanimous.

20 ANC 1B opposes this application for multiple reasons.
21 The lot in question is zoned for residential use, and the ANC
22 strongly believes that this is the correct use. The lot is in
23 between two Metro entrances. One is at 10th Street and one is
24 between 12th and 13th Street. So it is truly directly between
25 two entrances in a dense and vibrant area of the city.

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1 To use it as a surface parking lot is not in the best
2 interests of the city, or the neighborhood. This lot is also
3 the site of illegal activities, such as public drinking, public
4 harassment, and parking in public space, on --- they park on
5 the sidewalk.

6 And due to the owners operating it illegally as a parking
7 lot for years by their own admission, the ANC does not have
8 confidence in them becoming good stewards of the property now.
9 Furthermore, we do not believe that the correct message is sent
10 to the public, or Applicants, when long-term, illegal use is
11 rewarded with being granted a variance.

12 The business owner in 1931 11th Street did not
13 communicate with ANC 1B, either -- attend either a committee
14 meeting or a full Commission meeting on their case.

15 When the owner applied previously, in October 2014,
16 1B-02 did not have an ANC Commissioner and the ANC was not
17 well-informed about the history of the lot.

18 In a similar case, with an illegal parking lot in a
19 residential zone at the corner of Vermont and T Street, N.W.,
20 which is also in my single member district, the neighborhood
21 compelled the zoning to be upheld. What was once an eyesore
22 and the site of muggings, is now a vibrant part of our
23 neighborhood. We have townhouses, and new neighbors that come
24 to our businesses, and have joined our community.

25 Variances are a privilege and should be granted to

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1 business owners and home owners who respect our laws,
2 processes, and our communities. The Applicant has been using
3 this lot illegally, for years. There's illegal activity by the
4 public and the business owners, and the ANC asks that you uphold
5 the current zoning, and put this lot to proper use.

6 CHAIRMAN JORDAN: Board, any questions of the ANC?

7 MEMBER HOOD: I'm just curious. When you say the Board
8 of Zoning Adjustment putting it to proper use, what do you mean?

9 MS. SULLIVAN: We would like to see you oppose this
10 variance and not grant it, so that it can be used as it should
11 be, as a residential lot.

12 MEMBER HOOD: There are parking lots all over the city
13 that are in different residential and commercial areas, that
14 are being used as parking lots until their proper time to be
15 developed.

16 So I'm just not following how the Board can make them
17 ---- or make anybody across the city do that.

18 MS. SULLIVAN: They have been earning income off of this
19 lot for years. One would have to assume that given financial
20 realities of no longer being able to operate it as an illegal
21 lot, they have said that they want to develop it, they just
22 want to wait a couple more years, which they've said
23 previously, and it was a couple more years then as well.

24 So one would assume that this would hurry their decision
25 to go ahead and develop the lot, either themselves or by selling

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1 it.

2 MEMBER HOOD: Okay. I understand what the --

3 CHAIRMAN JORDAN: Let's make sure we're clear on
4 something. This is before us on special exception and not a
5 variance.

6 MEMBER HOOD: Not a variance.

7 CHAIRMAN JORDAN: And also we need an amended application
8 filed to go with that.

9 So I want to make sure that's clear.

10 Any other questions, Board?

11 (No response)

12 CHAIRMAN JORDAN: Does the Applicant have any questions
13 of the Commissioner?

14 MS. SULLIVAN: I actually have a few more points I would
15 like to make.

16 As you can tell from my letter, we're not concerned about
17 the actual trash. It's a busy area. That happens. If they had
18 someone there actually monitoring the lot, that could be taken
19 care of.

20 Our concern more is that we have a lot that is open. It
21 has a gate that's never closed. People come in and out. We
22 already have a huge problem with loitering in that area. I
23 myself have been harassed in that area. My child has been
24 harassed in that area. I have seen fights outside the bus stop
25 in that area.

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1 It's an area that is bringing our neighborhood down. We
2 need to see this improved. I understand that we have
3 businesses there that need parking, and I think that that is
4 something that would need to be looked at.

5 But we also have to look at the overall needs of the
6 neighborhood, and we do not need a surface parking lot in
7 between two Metro entrances. We do not need an open space for
8 people to come and go as they please, without any monitoring
9 by the business that owns it. The person that they're talking
10 about is having monitor it from their other lot is on the other
11 side of U Street, behind another building. There's no sight
12 line. There's no hearing between the two. Right now, there's
13 not anything that indicates if you have a problem, that you
14 should go to that lot.

15 There's nothing that indicates you should go to
16 Industrial Bank if you have a problem. It's a complete free
17 for all. We have people parking regularly on the sidewalk,
18 parking on the public space between the sidewalk and the gate.
19 It is not well-maintained, in every sense of the word. It is
20 not well-monitored. They are not being good neighbors on this
21 lot.

22 Have they been good neighbors, as Industrial Bank, for
23 80 years in our neighborhood? Yes. As a business, I support
24 them. I'm happy to have them in the neighborhood. I hope they
25 stay for another 80 years. But this parking lot is an ugly

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1 stepchild, in a way. If you look at their other lot, it's
2 well-fenced. It's well-maintained. They have an attendant
3 there.

4 It's an ugly chain link fence with barbed wire on the
5 top of it. There's only one way in and out, and they have said
6 that it will be difficult to add the extra exit in to the alley.
7 Neighbors have concerns about that with traffic.

8 And so the ANC just very strongly feels that this is not
9 a good use, and that it's within the city's power to keep the
10 zoning as it is, and compel it to then be used as residential,
11 which we desperately need.

12 CHAIRMAN JORDAN: Well, this Board can't compel them, to
13 tell how to use their property. If they want to keep it as a
14 lot, a flat lot and do nothing, then they have the ability to
15 do that. So I don't want to confuse --

16 MS. SULLIVAN: Right.

17 CHAIRMAN JORDAN: --- the two issues. But I understand
18 --

19 MS. SULLIVAN: But then they would also need to secure
20 that lot, would they not?

21 CHAIRMAN JORDAN: Well, not necessarily. But let's move
22 on. What I'm trying to say is that we can't dictate to them
23 how to use it. We can say how they can't use it, per se. I mean,
24 we can control it with that. But if they just want to keep an
25 open lot, they can keep an open lot, and they have to deal with

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1 that other aspect of consequences.

2 We can't make them development, we can't make them put
3 a house on it, any of that.

4 Anything else?

5 MS. SULLIVAN: Not at this time. We have a resident,
6 though, who would also like to speak.

7 CHAIRMAN JORDAN: Not yet. I just lost that thought,
8 adding some more conditions on this. I just lost the thought.
9 I was adding some conditions till we got through that.

10 Does the Applicant have any questions of the ANC
11 Commissioner?

12 MS. JOHNSON: I would like to raise the point that in
13 December 2014, this same ANC issued a letter of support of this
14 application. So if the conditions are so horrible, I'd like
15 to know --

16 MS. SULLIVAN: Which I explained in my letter. We did not
17 have a sitting Commissioner for 1B-01 at that time. The
18 Commissioner had resigned too close to the election to allow
19 for a special election for someone to be put in that seat. So
20 the ANC was not properly informed about --

21 MR. MITCHELL: Fact of the matter, there's a letter of
22 support in December --

23 CHAIRMAN JORDAN: No, no, no. We don't do that. She's
24 talking. Let her finish. Please finish.

25 MS. SULLIVAN: So the ANC was not properly informed, and

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1 speaking with the current ANC president, who was ANC president
2 at the time, the ANC's understanding is that it was for a
3 temporary use as a parking lot, not as a permanent use.

4 MS. JOHNSON: Okay. In any case, other residents have
5 expressed their support of the application.

6 CHAIRMAN JORDAN: Are you asking a question?

7 MS. JOHNSON: I'm sorry.

8 MS. SULLIVAN: I would argue that --

9 CHAIRMAN JORDAN: Wait, wait. Time out. Time out. It's
10 not a free for all. Folks, trust me, this is not a free for
11 all. It may look like one, but it's not. Have you asked all
12 the questions you want to ask?

13 MR. MITCHELL: I don't think we have any further
14 questions.

15 CHAIRMAN JORDAN: Thank you. All right. You were about
16 to make a statement?

17 MS. SULLIVAN: Just in response. That I believe the
18 letters of support have been from businesses, and that the
19 letters of opposition have been from residents.

20 CHAIRMAN JORDAN: Okay. We can read them. All right. Got
21 it. Thank you.

22 Anyone else here wishing to speak in support of this
23 application? Anyone here speaking in support? In support?

24 (No response)

25 CHAIRMAN JORDAN: Anyone in opposition? Now it's on

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1 you. You get three minutes.

2 MR. BOERTLEIN: Okay. Good morning.

3 My name is Neil Boertlein, and I'm the owner of 1930 11th Street,
4 N.W., the house directly across the street from the property
5 under consideration. I, and other residential neighbors,
6 oppose this, I guess it's now a special exception, and nine
7 households on the block have submitted letters in opposition
8 to it.

9 Contrary to the Applicant's assertion, the lot's
10 continued use as a parking lot clearly and negatively impacts
11 the residential character of the area, adding traffic and noise
12 and crime to a predominantly residential street. The lot is
13 a blight on the neighborhood with its high, barbed wire, top,
14 chain-link fence, cracked asphalt and no green space. The
15 driveway in to the parking lot crosses a heavily used sidewalk
16 right at a bus stop, creating a dangerous situation for
17 pedestrians, and the lot is consistently overfull with cars
18 parked in the public space and over the sidewalk.

19 Even the Office of Planning's overhead map shows cars
20 illegally parked in the public space. You can go on Google Maps
21 or Google Street View, and see the same thing.

22 The lot's currently unlocked and unmonitored at all
23 times, and frankly, due to the lot's small size, this seems
24 unlikely to change.

25 The lot's consistently a site for loitering, litter, and

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1 public urination, and personally, I think the Office of
2 Planning's expectation that going forward, the gate will
3 remain closed at all times to control these problems, is
4 unrealistic, given the tiny size of this lot. And it's going
5 to get smaller. They're saying eight spaces now.

6 It will almost certainly remain unattended. So I don't
7 expect that the gate will remain closed and that these issues
8 will be dealt with. That based on both the size, and just given
9 the owner's demonstrated inability or unwillingness to control
10 these issues, and obey the law, up to this point.

11 The previous variance application was dismissed last
12 fall by the Board of Zoning Adjustment after the Applicant
13 failed to appear at three separate zoning hearings, wasting
14 the time of both the Zoning Board and those of us that did bother
15 to attend.

16 And since the Applicant location was rejected, the owner
17 has continued to operate the parking lot in contravention of
18 the law, and in disregard of the BZA ruling.

19 The lot seems to meet all the requirements to be used
20 as a one or two unit residential building, so there's nothing
21 inherent to the lot that creates special hardship, requiring
22 a use other than its intended use.

23 And the Applicant has provided no evidence that the lot
24 is unfit for its intended use. The Applicant in fact has stated
25 that, in the request, that the lot likely had historic use as

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1 a residence.

2 A return of this property to its historic residential
3 use, in keeping with its zoning, would contribute to the
4 continued revitalization of the area, and is more in keeping
5 with the intent of the U Street Historic District than
6 preserving the lot's use as an illegal parking lot.

7 CHAIRMAN JORDAN: Can you begin to wrap up for me, please.

8 MR. BOERTLEIN: Sure. I guess the last thing I wanted to
9 say is that there's really no public good served by this lot.
10 Industrial Bank has a much larger, sparsely-used lot, directly
11 across from U Street, and this eight space parking lot is
12 essentially parking neutral. If the lots were developed, they
13 could have four alley spaces behind them, and eliminating the
14 curb cut would add two to three street parking spaces.

15 So there's really no net benefit to --- of this lot.
16 That's it. Thank you.

17 CHAIRMAN JORDAN: Does the Applicant have any questions
18 of the witness?

19 MR. MITCHELL: I have no questions.

20 CHAIRMAN JORDAN: Board?

21 (No response)

22 CHAIRMAN JORDAN: Does anyone else wish to speak in
23 opposition?

24 (No response)

25 CHAIRMAN JORDAN: Okay. Well, let's wrap this up. Let me

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1 do this. I'm going to continue this hearing and require a proper
2 posted affidavit of posting. The continued hearing will only
3 come if there's new issues that arise from anything from the
4 affidavit of posting. Okay? So it's going to be bifurcated.

5 We'll also make a decision date, and if there's going
6 to be conditions, I'm going to provide you some update on the
7 conditions, besides what we have in Office of Planning's
8 conditions, which are approval for a period of one year, if
9 we do that.

10 Prior to the issuance of a certification of occupancy,
11 the Applicant shall improve the site in conformance with the
12 site plan dated June 2nd, 2015, submitted to OP, and submit the
13 site plan for Office of Zoning records. Evergreen shrubs, at
14 least 42 inches in height, shall be thickly planted and
15 maintained along the 11th Street frontage. Gates to the lot
16 shall be kept closed at all times, except to permit the entrance
17 or exit of patrons in vehicles.

18 No parking shall be permitted within public space.
19 Six. No loitering shall be permitted on the property. Rule
20 seven. The property shall be maintained free of trash and
21 debris. Eight. The owner shall post on the property the name
22 of a contact person, to publicly post on the property the name
23 of a contact person.

24 Nine. The owner shall name a liaison person to
25 coordinate with the ANC and the community for issues.

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1 Ten. The owner shall maintain a security camera on the
2 property. Those will be the potential conditions, which will
3 be submitted on this, if we go forward with this.

4 As you know, I added the last four, because from based
5 upon what we've talked about in this hearing, if we're going
6 to go forward with this. But I'm concerned that we placed a
7 notice. We have a modified hearing set on September 15th.

8 MEMBER HOOD: September the 15th.

9 CHAIRMAN JORDAN: September 15th.

10 MEMBER HOOD: And Mr. Chairman, if I can add. If some of
11 those things which the application has mentioned today we're
12 going to do, I think that would show a good faith effort to
13 the community, if some of those things --- that's enough time
14 to do at least something. We can see some kind of progress,
15 and I think from my standpoint, will have a lot of
16 determination, especially on this period of one year for me.
17 So I think that's too short.

18 But anyway.

19 MR. TESHOME: But is it possible, in terms of the BZA
20 schedule, to have an earlier hearing than --

21 CHAIRMAN JORDAN: No. This is the date. It's not
22 happening. This is the date we're doing. September 15th will
23 be the

24 MR. TESHOME: Thank you.

25 CHAIRMAN JORDAN: --- order to continue for modified

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1 hearing. I would heed what Chairman Hood said --

2 MEMBER HOOD: To make progress.

3 CHAIRMAN JORDAN: --- because we have not made a
4 determination, what we're doing, but certainly those
5 conditions will be at least what's going to go in place. Is
6 that good with the Board? Anybody object?

7 Okay. So then you need to post it right away, and making
8 sure that you meet all the requirements for posting, and
9 maintain the sign, and have that filed timely. We want to have
10 it filed by September 8th.

11 MR. TESHOME: I understand.

12 MEMBER HOOD: Let me just say this to you. Mr. Chairman.
13 The Board doesn't meet in August, so that may help you
14 understand why we're getting to September.

15 MR. TESHOME: All right. Now --

16 MEMBER HOOD: We actually take a break, believe it or not.

17 MR. TESHOME: In regards to the posting, if the posting
18 went up now, does that mean that it should be maintained through
19 August-September, or 30 days prior to the September hearing?

20 CHAIRMAN JORDAN: As long as you meet the regulatory
21 time, you do it. But let's get it up.

22 MR. TESHOME: No problem.

23 CHAIRMAN JORDAN: And in fact you might want to document
24 the file, take a picture every day with a newspaper sitting
25 there. Let's see it's there. Okay?

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1 MR. TESHOME: We have a picture

2 CHAIRMAN JORDAN: All right. Look. The horse is gone.
3 Gate open. Horse ran. Okay. So that's where we are. Appreciate
4 it.

5 Mr. Moy.

6 MR. MITCHELL: You said September
7 8th?

8 MR. MOY: Well, the continued hearing on --- or a modified
9 hearing for September 15th, and any filings by September 8th.
10 Would that include the ANC? Any --

11 CHAIRMAN JORDAN: We've already had the ANC.

12 MR. MOY: Okay. I'm just checking.

13 CHAIRMAN JORDAN: And I'm really not --- you know, I just
14 want, if there's some other issue that didn't come up with the
15 affidavit of posting --- you know, that's the only reason why.
16 I want to make sure it's posted, and make sure we have it. All
17 right. Thank you. Appreciate it. Thank you.

18 MR. MITCHELL: I'm sorry, Mr. Chairman. One last thing.
19 Does that include the modified application? The amended
20 application?

21 CHAIRMAN JORDAN: Yes. You need to get that. Thank you
22 very much for that. And your site plan. Get that in.

23 MR. TESHOME: No problem. It's here.

24 CHAIRMAN JORDAN: Thank you. Thank you all. Thank you all
25 very much. All right.

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1 Let's call 19025.

2 MR. MOY: All right. To the table Applicants to
3 Application No. 19025. This is the Application of Perseus 1827
4 Adams Mill Investments, LLC. This was captioned and advertised
5 for special exception relief, and property is at premises 1827
6 Adams Mill Road, N.W.

7 CHAIRMAN JORDAN: Mr. Mordfin, you're going to have to
8 --- yes, you guys are going to have to take that outside.
9 Thanks. Wait till Mr. Hood comes back.

10 Okay. Please identify yourselves.

11 MR. SCHWENDINGER: My name is Steve Schwendinger. I'm
12 with Perseus Realty, the developer of The Adamo at 1827 Adams
13 Mill Road.

14 MS. BLOOMFIELD: Jessica Bloomfield with Holland &
15 Knight.

16 MR. COLLINS: I'm Chris Collins with Holland & Knight.

17 CHAIRMAN JORDAN: All right. I don't think there's any
18 issue that the Board necessarily has. Let me do this kind of
19 in reverse. Can we kind of do this in reverse? Who's here on
20 this case? Is anyone here on this case? Anyone in opposition
21 on this case?

22 Okay. Then I believe that the record's sufficient based
23 upon what's been filed, in my estimation. I don't know if the
24 Board has any other questions pending on this case.

25 Board?

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1 (No response)

2 CHAIRMAN JORDAN: Okay. So as you know how we proceed,
3 Ms. Bloomfield, we would either --- you can do a presentation,
4 if you want, or we can proceed on.

5 MS. BLOOMFIELD: You can proceed. We rest on the record.
6 Thank you.

7 CHAIRMAN JORDAN: And I don't know if the Office of
8 Planning has anything in addition, that they may want to add.

9 MS. ELLIOTT: Thank you, Mr. Chairman. I'll keep it
10 short, and will say on the record we are recommending approval
11 of the request.

12 CHAIRMAN JORDAN: Okay. Is anyone here from DDOT?

13 (No response)

14 CHAIRMAN JORDAN: We do have a letter of no objection
15 Department of Transportation, with some conditions, and the
16 conditions are ---where are they? What'd I do with my
17 conditions? Do you have Department of Transportation
18 conditions? Do you have some conditions from Transportation?
19 I can't --

20 (Pause)

21 CHAIRMAN JORDAN: Okay. You saw what they recommended.
22 Are you going to do any bicycle racks?

23 MS. BLOOMFIELD: Yes. We're agreeable to add the nine,
24 total, bicycle racks as they requested.

25 CHAIRMAN JORDAN: Okay. Is anyone here from ANC 1C? We

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1 do have a letter of support from ANC 1C.

2 (No response)

3 CHAIRMAN JORDAN: Anyone here wishing to speak in
4 support? In support?

5 (No response)

6 CHAIRMAN JORDAN: Anyone in opposition? Anyone in
7 opposition?

8 (No response)

9 CHAIRMAN JORDAN: Then we'll close this hearing based
10 upon what has been brought before the Board so far. I would
11 move that we grant the relief in 19025.

12 VICE-CHAIRMAN HEATH: Second.

13 CHAIRMAN JORDAN: Motion made and seconded. Any
14 unreadiness?

15 All those in favor, aye?

16 (Chorus of ayes)

17 CHAIRMAN JORDAN: Those opposed, nay.

18 The motion carries. Mr. Moy.

19 MR. MOY: Staff would record the vote as three to zero.
20 This is on the motion of Chairman Jordan to approve the
21 application for the relief requested, plus the two conditions
22 proffered by DDOT, and accepted by the Applicant. Second the
23 motion, Vice-Chairperson --

24 VICE-CHAIRMAN HEATH: We didn't.

25 MR. MOY: You didn't?

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1 CHAIRMAN JORDAN: What was that? What's that?

2 MR. MOY: Did the Board add the conditions to do that?

3 CHAIRMAN JORDAN: No. We didn't. We didn't add the
4 conditions.

5 MR. MOY: All right. Thanks for the clarification.
6 Seconded by Vice-Chairperson Heath. Also in support Mr. Hood.
7 We have a Board member absent and a seat vacant. The motion
8 carries, three to zero, sir.

9 CHAIRMAN JORDAN: Summary. Summary order. All right.
10 Thank you.

11 18906.

12 MR. MOY: To the table, parties to Application No. 18906.
13 This is the application of Endeka Enterprises and 1320 Penelope
14 LLC. This is a request for variance relief from parking
15 requirements and special exceptions from the roof structure
16 setback requirements at premises 1337 Connecticut Avenue, N.W.

17 CHAIRMAN JORDAN: Okay. Let's identify ourselves. Come
18 and let's take these seats. Okay. Let's identify ourselves,
19 please.

20 MS. RODDY: Good afternoon. My name is Christine Roddy
21 and I'm an attorney with Goulston & Storrs.

22 MR. LANSING: Good afternoon. Will Lansing with 1320
23 Penelope LLC, ownership of the property.

24 MR. ROSENBERG: Ryan Rosenberg with Bridge Street Global
25 Hospitality. I am the vice president of operations.

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1 MS. ANGJELI: Anila Angjeli, I'm the architect of the
2 project.

3 MR. ANDRES: Good morning, Chairman Jordan. Erwin Andres
4 of Gorove Slade Associates.

5 CHAIRMAN JORDAN: Okay. Board, I think we know what
6 general issues are. Of course, you know, I think we're okay
7 and everything, but you know, the parking's always an issue.
8 Parking's always an issue, and you know Erwin, how I am about
9 parking in this particular spot. Let me ask a question.

10 MR. ANDRES: Sure.

11 CHAIRMAN JORDAN: Did you do a survey of the employees,
12 to find how out many are going to drive? What is your estimation
13 of those who are going to drive?

14 MR. ANDRES: Well, the model for this hotel is actually,
15 believe it or not, it's actually unique from the other two
16 hotels that we've appeared before you, and I believe that if
17 either Mr. Lansing, or representative from Bridge Street can
18 just talk about the type of hotel it is.

19 MR. LANSING: Sure. Chairman Jordan, to answer your
20 question specifically, it's an extended use, corporate type
21 stay hotel, of which we've been told by the user, that no more
22 than two to three staff people will be there at any one point
23 in time.

24 CHAIRMAN JORDAN: Okay.

25 MR. LANSING: And they'll be traveling to the hotel via

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1 public transportation.

2 CHAIRMAN JORDAN: So they only have two or three
3 employees?

4 MR. LANSING: Yes, sir.

5 CHAIRMAN JORDAN: Okay. You're right. That was a good
6 save. Okay. You know, because, you know, we understand, what
7 we get in front of us about the guest all the time. But it's
8 really an employee. In fact, what I've learned, even
9 subsequently, when you do the two block, three block radius
10 of the hotel, these employees usually are parking within
11 walking distance. So it may be well beyond that scope.

12 You know, it may be --- you know, it might be eight, nine
13 blocks. As long as they can walk. They drive to the District
14 and they park, and so really kind of takes your numbers, and
15 kind of just bastardizes them, to some extent. But two and three
16 employees at this extended stay.

17 As we learned last week --- and I don't think this would
18 be the case for it --- but as we learned last week, Mr. Hood,
19 that based upon what Department of Transportation has done in
20 regard to survey, some of the relief and some of the conditions
21 that they talked --- that in some of our other cases, where
22 they projected, based upon representations, that they weren't
23 going to be driving or whatever, those numbers are off. They're
24 not meeting those goals. So it's a concern.

25 You know, parking's been a concern of this board since

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1 the dawn of time, right? But this is one I think might be a
2 little bit different. Mr. Hood.

3 MEMBER HOOD: From what you just said, I think Mr. Andres
4 also knows my issue about ground traffic as a whole, including
5 parking. But I think this may be a little different from what
6 you all just dealt with.

7 CHAIRMAN JORDAN: Yes. That's what I'm thinking --

8 MEMBER HOOD: From what's being represented.

9 CHAIRMAN JORDAN: Yes. I think this is one that does ---
10 and so then you took care of my question. Any other questions
11 the Board may have?

12 (No response)

13 CHAIRMAN JORDAN: Then I think we can go ahead and proceed
14 on, if that is what you would like to do.

15 MS. BLOOMFIELD: we're happy to stand on the record, or
16 we're also happy to do a full presentation, if you'd like to
17 hear the presentation.

18 CHAIRMAN JORDAN: We haven't done those in years, unless
19 we really don't like it. Okay. So let's turn to Office of
20 Planning.

21 MR. GYOR: Good afternoon, Mr. Chairman, members of the
22 Board. Stephen Gyor with the Office of Planning, and we support
23 the application, and we rest on the record. Thanks.

24 CHAIRMAN JORDAN: Board, any questions of Planning?

25 (No response)

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1 CHAIRMAN JORDAN: Okay. Has the Applicant any questions
2 of Planning?

3 (No response)

4 CHAIRMAN JORDAN: Anyone here from Department of
5 Transportation? We don't have --- there's no objection,
6 Department of Transportation. I think Office of Planning and
7 Department of Transportation has accepted the proposed TDM
8 plan, which we would incorporate in any order, which requires
9 a loading plan in the TM coordinator, and et cetera, based on
10 what's in the report.

11 Is anyone here from ANC 2B? ANC 2B?

12 (No response)

13 CHAIRMAN JORDAN: We do have a letter of support from ANC
14 2B, that talks about certainly agreeing to the transportation
15 plan and loading plan, that's been submitted.

16 Anyone here wishing to speak in support? Anyone in
17 support?

18 (No response)

19 CHAIRMAN JORDAN: Anyone in opposition?

20 (No response)

21 CHAIRMAN JORDAN: Then we'll close the record based upon
22 what we have in the file, and I would move that we grant the
23 relief in 18906, with the conditions as specified in OP and
24 Department of Transportation plan, which includes the loading
25 plan, the transportation management plan, and transportation

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1 coordinator.

2 VICE-CHAIRMAN HEATH: Second.

3 CHAIRMAN JORDAN: Motion made and seconded. Additional
4 discussion?

5 (No response)

6 CHAIRMAN JORDAN: All those in favor, aye.

7 (Chorus of ayes)

8 CHAIRMAN JORDAN: Those opposed, nay.

9 The motion carries. Mr. Moy.

10 MR. MOY: Staff would record the vote as three to zero,
11 this on the motion of Chairman Jordan to approve the relief
12 being requested -- I'm going to say amended relief, with
13 conditions. Also seconding the motion, Vice-Chairperson
14 Heath. Also in support, Mr. Hood. We have a Board member absent
15 and a Board seat vacant. The motion carries, sir.

16 CHAIRMAN JORDAN: Summary. All right. Thank you. Let's
17 call the next case, please.

18 MR. MOY: The next, and I believe application before the
19 Board, is Application No. 18985. This is the application of
20 David Benson. This was captioned and advertised for variance
21 relief from the minimum lot area requirements and rear yard
22 requirements. That property, 2701 11th Street, N.W.

23 CHAIRMAN JORDAN: All right. Let's identify yourselves.
24 Benson.

25 MR. BENSON: My name is David Benson.

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1 CHAIRMAN JORDAN: And you are?

2 MR. BENSON: I'm the owner.

3 CHAIRMAN JORDAN: Okay. And to your right?

4 MR. COUCH: My name is William Couch. I am the architect.

5 CHAIRMAN JORDAN: All right. There's no affidavit of
6 posting. Have you posted on this property?

7 MR. COUCH: We did, and we were in contact, and I have
8 the confirmation emails stating that they received it. There
9 was some problem with the IZIS system when we --

10 CHAIRMAN JORDAN: How long was it posted?

11 MR. BENSON: I posted it on June 12.

12 CHAIRMAN JORDAN: June 12.

13 MR. BENSON: I have the affidavit that swears to that,
14 and pictures.

15 CHAIRMAN JORDAN: Okay. This is a --- you know, you got
16 a lift on this case. The Office of Planning is recommending
17 denial. The ANC's recommending denial. So --

18 MR. BENSON: May I read a statement?

19 CHAIRMAN JORDAN: You can do whichever way you want.

20 MR. BENSON: Okay. All right. So my name is David Benson.
21 I have lived in Columbia Heights over 15 years, since 1999,
22 till the city's Revitalization Initiative, My neighborhood
23 continues to attract new businesses, and mostly single
24 professionals as opposed to families with children. According
25 to the District of Columbia's state data center, monthly brief,

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1 which was published in January 2014 by Dr. Joy Phillips, of
2 the 63,000 new residents that moved to D.C. in 2012, 80 percent
3 were not, never married at the time, mostly single, and the
4 median age is twenty-five.

5 CHAIRMAN JORDAN: Let me cut that. You need to show us
6 how your property meets the exceptional condition, situation
7 and condition, and then how is it a practical difficulty for
8 you to use the property.

9 MR. BENSON: Okay.

10 CHAIRMAN JORDAN: Are you the property owner?

11 MR. BENSON: I am.

12 CHAIRMAN JORDAN: How long have you owned it?

13 MR. BENSON: I've owned it since January of 2000. 15
14 years.

15 CHAIRMAN JORDAN: January 2000?

16 MR. BENSON: That's correct.

17 CHAIRMAN JORDAN: 15 years. And you state --- is the
18 property in deplorable condition? Bad condition?

19 MR. BENSON: Well, it needs renovations, yes. I plan to
20 change the inside of the property. I'm not changing the
21 footprint, or a pop-up. There's no discernible difference on
22 the outside of the property.

23 CHAIRMAN JORDAN: Are you living in the property?

24 MR. BENSON: I'm living in the property and I want to
25 remain in the property.

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1 CHAIRMAN JORDAN: Okay. So how does it meet the test for
2 exceptional situation or condition?

3 MR. BENSON: Can you speak to that.

4 MR. COUCH: The property is, I guess unique, but not
5 incredibly so. It does have a --- it is a corner lot. It would
6 allow for slightly larger units than average. They'd be around
7 1100 square feet each. They would have windows on three sides.
8 It does allow for two parking spaces, but I would say that those
9 are the kind of --- those are the main characteristics of the
10 property. I think that --

11 CHAIRMAN JORDAN: And how do those characteristics stop
12 you, make, provide a practical difficulty for you meeting the
13 zoning regulations?

14 MR. COUCH: We could do a flat.

15 CHAIRMAN JORDAN: Within the zoning regulations?

16 MR. COUCH: Yes.

17 CHAIRMAN JORDAN: All right.

18 MR. BENSON: I understand the Office of Planning and
19 Development's position, but I'd like to also point out that
20 we --- I contacted my neighbors, and I have over 60 petitions
21 by my neighbors, who are in favor of this project.

22 CHAIRMAN JORDAN: I understand that. We have certain
23 requirements under the law. It's not a contest of who can get
24 as many signatures for or against. It's just not that.

25 MR. BENSON: But that's originally what OPD claimed, that

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1 the neighbors were opposed to pop-ups and having --

2 CHAIRMAN JORDAN: Have you read the Office of Planning's
3 report?

4 MR. BENSON: I did, and it mentioned that in response to
5 neighbors--

6 CHAIRMAN JORDAN: No. They said that the property doesn't
7 exhibit specific uniqueness to meet the test, and also that
8 there's a practical difficulty.

9 So let's do this. We'll give --- well, that's why I'm
10 asking those questions right now.

11 MR. COUCH: Right. No. We understand why you're asking.
12 They also said that --- I mean, I know that this is not as
13 important as meeting the test of exceptional -- or difficulty,
14 but they did --

15 CHAIRMAN JORDAN: All right.

16 MR. COUCH: --- they did say that they did not think that
17 it would cause any detriment to the public. That was part of
18 their report as well.

19 CHAIRMAN JORDAN: Do you understand what the test is --

20 MR. BENSON: I absolutely understand. Yes. I do.

21 CHAIRMAN JORDAN: And giving you more time won't help
22 you? You won't change from what you've already said? It's not
23 going to change what it is. Is that what you're saying?

24 MR. BENSON: It's not going to change the property, no.

25 CHAIRMAN JORDAN: All right. Is there anything else you

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1 think you need, want to say to the Board?

2 MR. BENSON: I can't remember the conditions, but only
3 that this is my retirement home. I plan to live in the basement.
4 I want to create three units. Also live in the basement to,
5 to my --- I'm 58 years old, so I was planning to retire there,
6 live there the rest of my life, and there would be a residual
7 income, having the two tenants. So when people buy a property,
8 it's not because --- just to sit on it, let it devalue. They
9 want to enhance the value of the property, use it as an
10 investment. And that's what I'm doing within the confines of
11 the law, so --

12 CHAIRMAN JORDAN: It's not within the confines of your
13 three units. Now you can do another unit, but not within ---
14 it's not within the confine of the law to do three units.

15 MR. BENSON: Okay. So this is why the special variance
16 is requested.

17 CHAIRMAN JORDAN: Yes. I understand. Okay. Going to the
18 Office of Planning, do you think there's something else you
19 need to add?

20 MR. GYOR: No, Mr. --

21 CHAIRMAN JORDAN: Maxine Brown- Roberts.

22 MR. GYOR: I am not. No. This is --

23 CHAIRMAN JORDAN: Are you guys tag teaming today?

24 MR. GYOR: I'm sitting in for Maxine today. But as you
25 mentioned, we recommend denial of the application as we do not

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1 find that the Applicant satisfied the first prong of the
2 variance test, which is exceptional situation. As the
3 Applicant mentioned, we do note that the proposal would not
4 be detrimental to the public good, and that there are other
5 multi-family properties in the area, but we couldn't get past
6 that first prong. So thank you.

7 CHAIRMAN JORDAN: Mr. Moy, how many cases do we have
8 September 15th? I thought it was three, until we started today.
9 Well, anybody can take this case.

10 MR. MOY: We have nine at the moment. You want to even
11 it up?

12 CHAIRMAN JORDAN: No. We can go to another day.

13 MR. MOY: Okay.

14 CHAIRMAN JORDAN: All right. Let me tell you what I'm
15 going to do for you. I'm getting coached by the --- I'm going
16 to give you guys some time to look over your application, give
17 it a stretch, because I think you really don't understand the
18 standard. I think you do --- I think Office of Planning has
19 told you, you've heard us here, but I think the Board would
20 feel more comfortable to give you time to take a look, and see
21 if you need to amend your application. So we're going to put
22 this on for a decision, Mr. Moy, for --- well, we've got
23 decisions on that date. We can do a decision. We don't have
24 to have any more hearing, I don't think. We've already ---
25 anyone here wishing to speak in support?

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1 (No response)

2 CHAIRMAN JORDAN: Anyone in opposition?

3 (No response)

4 CHAIRMAN JORDAN: Nobody's here. So we can put this on
5 for a decision.

6 MR. BENSON: I did have two neighbors who want to support
7 my project, but one is starting a new job and couldn't make
8 it. And the other one is on vacation tomorrow.

9 CHAIRMAN JORDAN: No, we --- so we can put this on for
10 decision, and the only other thing that we're going to do is
11 give the application the opportunity to provide to the Board
12 what they submit is exceptional condition and circumstance,
13 and the practical difficulty. Make sense? Okay.

14 MR. COUCH: When does that need to be?

15 CHAIRMAN JORDAN: That's what we're getting ready to say.

16 MR. MOY: So to give you plenty of time, Monday,
17 September 7th, if you can file your final --

18 MR. COUCH: And decision is on the 15th?

19 MR. MOY: --- brief argument. And the decision will be
20 on the 15th by the Board.

21 CHAIRMAN JORDAN: Okay. So that would be the order, that
22 you need --

23 MR. COUCH: Would you recommend any further engagement
24 with the ANC, or --

25 CHAIRMAN JORDAN: I would recommend you do what you need

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1 to do, you need to do it to. So that would include engaging
2 Planning, engaging definitely the ANC, and seeing where you
3 are. Okay?

4 MR. COUCH: All right. Thank you.

5 CHAIRMAN JORDAN: All right. In accordance with Section
6 405(c), the Open Meetings Act of the District of Columbia Code
7 2575, I move that the Board of Zoning Adjustment hold closed
8 meetings on Monday, July 6, 13, 20, and 27. The meetings will
9 start at 4:00 p.m., and are held for the purpose of obtaining
10 legal advice from our counsel, and deliberate upon but not
11 voting upon cases scheduled to be publicly heard or decided
12 on the Board's docket for the following day.

13 These cases are identified in the Board's public hearing
14 agenda of July 7th, 14th --- uh-ha --- typo --- July 21, not June
15 21st, and July 28th.

16 The closed meeting for these purposes if permitted by
17 Section 405(b)(4) and (b)(13) of the Act. Is there a second.

18 VICE-CHAIRMAN HEATH: Second.

19 CHAIRMAN JORDAN: All right. So will the secretary please
20 roll call vote the motion.

21 MR. MOY: Yes. Thank you, Mr. Chairman. When I call your
22 name, if the members can reply with a yes or no.

23 Vice-Chairperson Heath.

24 VICE-CHAIRMAN HEATH: Yes.

25 MR. MOY: Chairman Jordan.

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1 CHAIRMAN JORDAN: Yes.

2 MR. MOY: Chairman of the Zoning Commission Hood.

3 MEMBER HOOD: I have to think about it. You all need my
4 vote?

5 CHAIRMAN JORDAN: If you want to give it.

6 MEMBER HOOD: Okay. Yes.

7 MR. MOY: You have a Board member not present. The motion
8 carries, Mr. Chairman.

9 CHAIRMAN JORDAN: All right. Seeing that the vote appears
10 to have passed, I would request that the Office of Zoning
11 provide notice of these closed meetings in accordance with the
12 Act.

13 Any other business coming before the Board?

14 MR. MOY: Not from the staff, sir.

15 CHAIRMAN JORDAN: All right. Anybody else, then, if it's
16 not just coming from staff? No. So we can be adjourned. Thank
17 you all.

18 (Whereupon, at 12:34 p.m., the Regular Public Meeting
19 of the Board of Zoning Adjustment was adjourned.)

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