

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

July 7, 2015

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:40 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice-Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ELISE VITALE
MATT JESICK
STEVE COCHRAN
STEPHEN GYOR
ANNE FOTHERGILL
STEPHEN MORDFIN
MEGAN RAPPOLT

The transcript constitutes the minutes from the Public Hearing held on July 7 2015.

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

(9:40 a.m.)

CHAIRPERSON JORDAN: Good morning, could we please come to order. Today's date is July 7, 2015. We're here for the Board of Zoning Adjustment of the District of Columbia's public hearing. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street North West. My name is Lloyd Jordan, Chairperson, to my right is Jeffrey Hinkle, member of the board, to my left is Vice Chairman Marnique Heath, to her left is Marcie Cohen, member of the zoning commission sitting as a member of the Board of Zoning Adjustment today.

Please be advised that today's proceedings are being web cast 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 silence any devices that may ring or buzz loudly.

If you're going to provide testimony or address the board in any way, I'm going to need you to do two things; if you're going to address the board in any manner I'm going to need you to two things. The first of which is to complete two witness cards per person. That's complete two witness cards per person and prior to testifying please give those cards to the court reporter who is to my right. So two cards per person, before you take a seat at the table please give those cards

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to the court report to my right.

The second thing, I'm going to need you to do is to now stand and take the oath which will be given by Mr. Moy, secretary to the board.

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

ALL STANDING: I do.

MR. MOY: Ladies and gentlemen, you may consider yourselves under oath.

CHAIRPERSON JORDAN: All right. Thanks for that. We normally would call our parties status people to have a conversation but in this case we will not so. Anything else here? No, I guess not, right? Mr. Moy, any announcements?

MR. MOY: Yes, sir. For the record and for the audience of cases on the docket for today's hearing, application number 18984 of Zahraie or Zahraie has been rescheduled by the board to next Tuesday, July the 14th. That completes the staff's announcement, Mr. Chairman.

CHAIRPERSON JORDAN: Okay. Let's call 31, Mr. Moy.

MR. MOY: All right. This is application number 19031 of Maurice Landes or Landes. Mr. Chairman, this is advertised and published for special exception relief under

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223 not meeting their area requirements at property 1529 East Capitol Street South East.

CHAIRPERSON JORDAN: All right, thank you. The parties for this case please come to the table. Okay. Would you please introduce yourselves? Make sure the microphone is on and let me be sure you gave your witnesses cards to the court reporter, correct? Okay. That's okay. You're microphone's not on, you're going to push it, you'll get a bright glowing light.

MR. JONES: Kim Jones, architect.

MR. LANDES: Maurice Landes, homeowner.

CHAIRPERSON JORDAN: Okay. I don't know where you are with the board's process and procedures but one of which is that we certainly reviewed your case well in advance and you have support from the Officer of Planning and I think an ANC report. And I believe that the information in the record already would support the relief requested. You have an opportunity to do a presentation before the board if you want or does anybody have any questions about this case?

VICE CHAIR COHEN: I do.

CHAIRPERSON JORDAN: Okay, hold on. We've got to go back, so.

VICE CHAIR COHEN: Just a quick question. Have you received any approval from the Capitol Hill Historic District?

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MR. LANDES: Yes, Historic has seen it and they approved it at staff level and CHRS also approved it.

VICE CHAIR COHEN: Thank you.

CHAIRPERSON JORDAN: Okay. Any other questions of this applicant? So the board doesn't have any questions right now, do I need to hear anything from you? So you have an opportunity to waive your initial portion and then come back to anything that comes up with regards to rebuttal, we can proceed on.

MR. LANDES: No.

CHAIRPERSON JORDAN: I take it from --

MR. LANDES: Nothing to add.

CHAIRPERSON JORDAN: Okay, very good. Then let's turn to the Office of Planning and see if there's anything in addition.

MS. VITALE: Good morning, Mr. Chair, the Office of Planning will rest on the record in support of the requested relief, thank you.

CHAIRPERSON JORDAN: Is there wasn't any questions of the Officer of Planning? Does the applicant have any questions of the Office of Planning?

MR. LANDES: No.

CHAIRPERSON JORDAN: Is there anyone here from the Department of Transportation for this case? We have a letter

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of no objection from the Department of Transportation. Is there anyone here from ANC 6B? Anyone from ANC 6B on this case? We do have a letter of support from the ANC 6B which voted 9-0 in support of this relief. Is there anyone here wishes to testify in support of this application? Anyone in support? Anyone in opposition? Anyone in opposition? Then we'll close the hearing based upon the record already in the file and I would move that we grant the relief in 19031.

MEMBER HINKLE: Second.

CHAIRPERSON JORDAN: Motion made and second. Discussion? All those in favor of the motion aye.

(Chorus of ayes.)

CHAIRPERSON JORDAN: Those opposed? Motion carries, Mr. Moy.

MR. MOY: Staff would record the vote as 4 to 0, this on the motion of Chairman Jordan to approve the application for the relief requested. Second the motion Mr. Hinkle, all support vice chairperson Heath and Ms. Cohn. Board seat vacant, motion carries, sir.

CHAIRPERSON JORDAN: Summary order, please.

MR. MOY: Thank you.

CHAIRPERSON JORDAN: Thanks. Let's call 32, please.

MR. MOY: All right. Parties to the table to

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application number 19032. This is the application with Tony Goodman and Norah Rabiah. This application, Mr. Chairman was advertised for variance relief from lot occupancy and special exception under 323 at property 1152 4th Street North East.

CHAIRPERSON JORDAN: All right, thank you. Will you please introduce yourself?

MS. HARDWICK: I'm Gay Hardwick, the architect.

CHAIRPERSON JORDAN: Procedurally, I have not found an amended requested relief here for the variance. I saw in the pre-hearing statement or your burden of proof statement a discussion about the change to variance but there was no document filed. Have you filed an amended --

MS. HARDWICK: I did file it. I uploaded it three weeks ago.

CHAIRPERSON JORDAN: An amended application?

MS. HARDWICK: Yes.

CHAIRPERSON JORDAN: Okay. Do we have that, Mr. Moy?

MR. MOY: I'm checking, sir. I believe it's Exhibit 24 which is the applicant's revised burden of proof.

CHAIRPERSON JORDAN: Yes, but the amended application is what I'm asking for?

MR. MOY: No, it's not in here, sir.

CHAIRPERSON JORDAN: Yes. Okay, we want to make

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sure we want to --

MS. HARDWICK: Yes, because it's not a special exception, it's a variance.

CHAIRPERSON JORDAN: Correct, correct.

MS. HARDWICK: Yes.

CHAIRPERSON JORDAN: Yes. So we're take it as an oral motion to amend but let's make sure that, verify after that it has been filed.

MS. HARDWICK: Okay.

CHAIRPERSON JORDAN: With that, I think that the file is complete for the requested relief. I don't know if the board members have any other questions about this case. All right. So as you saw in the previous case we can proceed on unless you want to just talk to us about whatever, but people tend to get themselves into trouble when they do that.

MS. HARDWICK: I'll stay quiet.

CHAIRPERSON JORDAN: Okay. All right, then. So let's turn to the Office of Planning and see if there's anything in addition to the report?

MR. JESICK: Good morning, Mr. Chairman and members of the board. Matt Jesick with the Office of Planning. The OP rests on the record in support of the application, thank you.

CHAIRPERSON JORDAN: Okay, good. Board, any

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questions of the Office of Planning? Does the applicant have any questions of the Office of Planning?

MS. HARDWICK: I just thought of one question, the original application did not have a request for a variance for lot size, and I want to make sure that that's part of this hearing as well, there are four variance requests.

CHAIRPERSON JORDAN: Wait, I thought we included that in the requested relief?

MS. HARDWICK: We did and OP reviewed it and ANC reviewed it and I put it on the amended application but if you don't have the amended application.

CHAIRPERSON JORDAN: But you talk about it in your burden of proof so we'll take that as an amendment and make sure --

MS. HARDWICK: Okay, great. Thanks.

CHAIRPERSON JORDAN: Yes, that's okay. I included but that's part of what needs to be in the application but we have --

MS. HARDWICK: Okay.

CHAIRPERSON JORDAN: Yes. All right. Anyone here for DDOT on this case? Anyone here, we do, well, do you have a letter? Yes, we do have a letter of no objection from DDOT. Anyone here from ANC 6C? ANC 6C voted in support of the application. Anyone here wishes to testify in support of the

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application? Anyone in support? Anyone opposed? Anyone opposed, and then we'll close the record on this case. I move that we grant the relief in 19032 to the amended relief requested.

VICE CHAIR COHEN: Second.

CHAIRPERSON JORDAN: Motion made and second. Additional discussion? All in favor aye?

(Chorus of ayes.)

CHAIRPERSON JORDAN: Those oppose nay. The motion carries. Mr. Moy.

MR. MOY: The staff would record the vote as 4 to 0 on the motion by Chairman Jordan to approve the amended relief for variances. Second the motion by Mrs. Cohen, also support vice chairperson Heath, Mr. Hinkle, board seat vacant, motion carries, sir.

CHAIRPERSON JORDAN: Summary order, please.

MR. MOY: Thank you.

CHAIRPERSON JORDAN: But we need to make sure the amended application is in, please.

MS. HARDWICK: I'll do it right now. Thanks.

CHAIRPERSON JORDAN: 33, Mr. Moy.

MR. MOY: To the table application number 19033, this is the application on Martin Block. This application, Mr. Chairman, was advertised publicly for a special exception

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relief under 223, not meeting the rear yard requirements at property 3348 Military Road North West.

CHAIRPERSON JORDAN: Okay. Please identify yourself.

MR. CARHART: My name is John Carhart.

CHAIRPERSON JORDAN: Just make sure you mic is on, please.

MR. CARHART: I've got a green light.

CHAIRPERSON JORDAN: A bright glowing green light.

MR. CARHART: Bright glowing, yes, it is now.

CHAIRPERSON JORDAN: Okay.

MR. CARHART: Bright and glowing.

CHAIRPERSON JORDAN: Thank you.

MR. CARHART: Yes, John Carhart, architect, acting as agent for Mr. Block.

CHAIRPERSON JORDAN: Okay. Well, let me ask you, did you present in front of ANC?

MR. CARHART: I'm not exactly sure but I think so, yes. I would have to go through the documents in order to --

CHAIRPERSON JORDAN: Did you contact the ANC?

MR. CARHART: Oh yes.

CHAIRPERSON JORDAN: Okay.

MR. CARHART: Yes.

CHAIRPERSON JORDAN: What happened with the contact?

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Because I don't have an ANC report, does anyone have an ANC report, maybe I skipped it? I didn't think so, okay. So evidentially you didn't make the contact?

MR. CARHART: No, Mr. Block is out of the country and I'm acting as his surrogate.

CHAIRPERSON JORDAN: Do you have a letter of authorization from you in this file? The plot thickens.

MR. MOY: There's none in the record, Mr. Chairman.

CHAIRPERSON JORDAN: Do you have anything from the property owner indicating that you're his representative?

MR. CARHART: Excuse me, from?

CHAIRPERSON JORDAN: The property owner indicating that you're the representative on this case? Who submitted this case?

MR. CARHART: Like an affidavit or something of that sort?

CHAIRPERSON JORDAN: Did you submit the application? Did he submit the application, you might check?

MR. CARHART: Well, this was reviewed with --

CHAIRPERSON JORDAN: Did he submit the application? Saved by the certification form, all right. So let's do that, but I want the record to be supplemented with a letter of authorization but we'll take this certification form. Thank you, Mr. Carhart.

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MR. CARHART: Yes.

CHAIRPERSON JORDAN: What else is there? The only other thing I want to talk about, I understand that in your plans, you're already going to have the translucent glazing of the windows, is that correct?

MR. CARHART: I would like to talk about that for just a moment and I'm wondering whether that is a requirement or a suggestion. Usually if you're concerned about privacy you would lower the blinds in your house, rather than asking your neighbor to lower their blinds.

CHAIRPERSON JORDAN: This is something that the applicant said was going to happen, so I'm trying to understand. Am I incorrect?

MR. CARHART: The applicant, after consideration, would very much prefer to have clear glazing in front of his kitchen sink rather than something that's obscured.

CHAIRPERSON JORDAN: Okay. Let me do this, let me go to the Office of Planning and see if there's a real need for that in light of planning suggestion.

MR. COCHRAN: Thank you, Mr. Chair. It's certainly not a make or break for OP.

CHAIRPERSON JORDAN: Yes.

MR. COCHRAN: If a person actually is using the kitchen to cook in the sink is about 15 feet above the rear

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yard of the neighbors and looking directly into it so it was just something to protect the privacy of the neighbor. They would not be able to pull down a shade for their rear yard.

CHAIRPERSON JORDAN: Yes, I don't have anyone who has objected to any other issue that came up about that. So I agree, I don't think it's make or break. Let me go back, take a step back on this ANC issue of notification. So you don't know if ANC was contacted? Have you made any outreach?

MR. CARHART: If you could me a few minutes to go through correspondence and find out. I'm quite sure that it was presented to the ANC and contact has been made with every neighbor within 200 feet and there have been no objections. The one lone exception is the next door neighbor and after multiple attempts to contact them there has been no response. Mr. Block knows that the neighbor owns property in several other locations, spends very little time in the house and that is probably why there has been no response. But we can't say they've got a thumbs up or thumbs down, either one.

CHAIRPERSON JORDAN: All right. So we'll do this, we'll take the representation that there was outreach to the ANC and the other thing that's a savior here is that you have 19 letters of support from neighbors. So and I would accept that unless the board has any other issue with that. Okay. All right, then. Let's turn to the Office of Planning and see

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if there's anything additional that the Office of Planning has on this case.

MR. COCHRAN: Just a few numerical corrections, Mr. Chair.

CHAIRPERSON JORDAN: Yes.

MR. COCHRAN: Because we were able to measure some of the dimensions for relief that had not been requested at the time we did our report, we worked off a scale drawings. Applicant has since revised the application after we submitted our report. So for instance we were noting that the side yard would be only a 5.5 feet, it's actually 6 feet so I just wanted to be sure that the record reflected the update that the applicant filed later.

CHAIRPERSON JORDAN: So it's 6 feet instead of 5.5?

MR. COCHRAN: Correct.

CHAIRPERSON JORDAN: So it's not going to change the requested relief?

MR. COCHRAN: No.

CHAIRPERSON JORDAN: Okay, thank you.

MR. COCHRAN: And the applicant did request all of the relief that we --

CHAIRPERSON JORDAN: Suggested.

MR. COCHRAN: -- suggested would be needed.

CHAIRPERSON JORDAN: I see 2001.3. Any additional

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questions, board, for Office of Planning?

VICE-CHAIRPERSON HEATH: No.

CHAIRPERSON JORDAN: Does the applicant have any questions for Office of Planning?

MR. CARHART: No, I don't.

CHAIRPERSON JORDAN: All right. Anyone here from the Department of Transportation in this case and we have a letter of no objection, Department of Transportation. Anyone here from ANC, duplicable ANC which is ANC 3G. Anyone here from ANC 3G? Okay. Anyone here wishing to speak in support of this application? We do indicate that you have numerous letters of support from neighbors. Anyone here wishing to speak in opposition? And we'll close this record on this case, number 19033 and I move that we grant the relief requested.

VICE-CHAIRPERSON HEATH: Second.

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

(Chorus of ayes.)

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

MR. MOY: Staff would record the vote as 4 to 0 on the motion of Chairman Jordan to approve the amended relief for special exception 223 not meeting the rear and side yard and nonconforming structure provisions. Second the motion by

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vice chairperson Heath, also supported Ms. Cohn, Mr. Hinkle, board seat vacant. Motion carries, sir.

CHAIRPERSON JORDAN: Summary please.

MR. MOY: Thank you.

CHAIRPERSON JORDAN: Thank you, 43. Thank you.

MR. MOY: All right. To the table the applicant to part to application number 19043, this is the application of the Phillips Collection. Mr. Chairman, this was advertised for a special exception leave from the rooftop structures under section 411.11 at 1600 21st Street North West.

CHAIRPERSON JORDAN: All right. Don't get too comfortable, no. Great, good morning. All right, introduce yourselves.

MS. MOLDENHAUER: Good morning, members of the board. My name is Meridith Moldenhauer on behalf of the Phillips Collection.

MR. DATLOW: Dan Datlow, director of facilities at the Phillips Collection.

MR. CHATELAIN: Leon Chatelain.

CHAIRPERSON JORDAN: All right, thank you. Mr. Moldenhauer, you know how we proceed and it seems like the file is complete and I can certainly stand to support the requested relief. Any other board members have any issues or questions on this one?

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VICE CHAIR COHEN: Yes, I'd just ask you to elaborate a little bit on the set back requirement on one to one?

MR. CHATELAIN: We have four very large air handling units to go in, into this penthouse plus two large boilers and the associated ductwork, piping, electrical and drainage from the roof or the penthouse itself. We are slopping back to keep the pitch of the existing mansard and actually increasing that a little bit. There is no other room even really to walk around within the space now.

VICE CHAIR COHEN: So from the street view, are you going to be able to see it from what angles of the area?

MR. CHATELAIN: You'll be able to see the new mansard from both 21st Street and I guess further up on Q Street, perhaps a little bit of Bleakly but largely from 21st Street.

VICE CHAIR COHEN: What's your use again?

MR. CHATELAIN: The mansard will be covered with copper shingles, roughly 13 inches square sit in a diagonal patter.

VICE CHAIR COHEN: Okay, thank you.

MR. CHATELAIN: Yes.

MS. MOLDENHAUER: We have gone through HPRB and received approval both from HPRB and from ANC for the HPRB portion of that case as well.

CHAIRPERSON JORDAN: Okay. Board, any other

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questions or anything you need to hear from this applicant?

VICE CHAIR COHEN: No.

CHAIRPERSON JORDAN: Okay.

MS. MOLDENHAUER: Even less on the record.

CHAIRPERSON JORDAN: Very good. So we'll go to the Office of Planning and see if there's anything addition that needs to be added to this.

MR. GYOR: Good morning, Mr. Chairman and members of the board. Stephen Gyor with the Office of Planning and we support the relief and rest on the record, thank you.

CHAIRPERSON JORDAN: Board, any questions of the Office of Planning? The applicant, any questions of Office of Planning?

MS. MOLDENHAUER: No questions, thank you.

CHAIRPERSON JORDAN: I lost my space here. Anyone here from the Department of Transportation in this case? Department of Transportation in this case, we do have a letter of no objection. Anyone here from ANC 2B? Anyone from ANC 2B, we have a letter of support from ANC 2B who voted 9 to 0 in support of this application. Is there anyone here wishing to speak in support of the application? Anyone in support? Anyone in opposition? Anyone in opposition? Then we'll close the record in this case and I would move that we grant the relief in 19043.

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VICE CHAIR COHEN: Second.

CHAIRPERSON JORDAN: Motion made and second. Any additional discussion? Any unreadiness? All those in favor aye.

(Chorus of ayes.)

CHAIRPERSON JORDAN: Those oppose nay? The motion carries. Mr. Moy.

MR. MOY: Staff would record the vote as 4 to 0, this is on the motion of Chairman Jordan to approve the application for the relief requested, seconding the motion Ms. Cohen, also support vice chairperson Heath and Mr. Hinkle, we have a board seat vacant, motion carries, sir.

CHAIRPERSON JORDAN: Summary please.

MR. MOY: Thank you.

CHAIRPERSON JORDAN: 1900 or 19000 or 000.

MR. MOY: The applicant to application number 19000 of Stuart F. and Jennifer Pierson. Mr. Chairman, I believe this application has been amended to remove variance relief from the off street parking requirements and amended to add special exception to nonconforming structure at property, where are we, 5435 Sherrier Place North West.

CHAIRPERSON JORDAN: Please introduce yourselves.

MS. PIERSON: I'm Jennifer Pierson, one of the co-owners of the house.

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MR. GRISAR: Mark Grisar, architectural designer.

MR. PIERSON: Stuart Pierson, homeowner.

CHAIRPERSON JORDAN: Okay, thank you. This is a continued hearing. We had you before and one of the board members had an issue and we kind of pushed back on this removing of the parking space exception. You subsequently amended it and so you're back and I think we completed the hearing on that and you wanted some additional time because of one of the board members had a concern and you've taken care of that concern with it, so I don't have any additional questions. If anyone else in the board may have? No. I think it's now prime and ready to proceed on and we appreciate your heeding the advice of the board and taking care of that particular matter and everything else is ready, very good.

MS. PIERSON: You're welcome.

CHAIRPERSON JORDAN: Very good. So then we've already had the hearing, there's nothing else new, planning, anything additional you want to add?

MR. MORDFIN: Good morning, Stephen Mordfin from the Office of Planning and OP supports the revised application and has nothing additional to add.

CHAIRPERSON JORDAN: Okay. We asked for support in opposition, I think we went all the way through, we're at the end of this hearing. If not, anyone here in support? Anyone

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in opposition? Then we'll close the record on this continued hearing and I would move that we grant the relief requested in the case, the amended relief requested in this case.

MEMBER HINKLE: Second.

CHAIRPERSON JORDAN: Motion made and second. Any discussion? All those in favor aye.

(Chorus of ayes.)

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

VICE CHAIR COHEN: Mr. Chairman, I did not vote on this because I wanted to wait until the public hearing.

CHAIRPERSON JORDAN: Yes, very good, thank you. Thank you for adding that.

MR. MOY: Staff would record the vote as 3 to 0, that is on the motion of Chairman Jordan to approve the application for the amended relief. Second the motion Mr. Hinkle, also support vice chairperson Heath, we have a board member not present, not voting and a board seat vacant. Motion carries, 3 to 0, sir.

CHAIRPERSON JORDAN: Summary please.

MR. MOY: Yes, sir.

CHAIRPERSON JORDAN: Now, give me a second, thank you very much.

MS. PIERSON: Thank you, kindly.

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MR. PIERSON: Thank you.

CHAIRPERSON JORDAN: I guess we have to hit this. Give me one more second. We might just hit the top of the order. 37, what's the 37, it doesn't get easier. All right. Let's do 26.

MR. MOY: Applicants to the table to application 19026. This is the application of 1300 H Street North East. Mr. Chairman, this is in for variance for off street parking as advertised publicly as well as special exceptions from the roof structure and overlay requirements at, where are we, 1300 H Street North East.

CHAIRPERSON JORDAN: Yes, that's really what it is. I had to catch myself up on the notes. You know, we read these things well in advance, I have to go back sometimes and catch up and read my notes. All right. Please identify yourselves.

MS. SHIKER: Good morning, Chairman and members of the board, my name is Christine Shiker with the law firm of Holland and Knight representing the applicant.

MR. DIEHL: My name is John Diehl, I'm with Environmental Consultants and Contractors.

MR. DEVADOSS: My name is Rebecca Snyder, I'm with Insight Property Group representing the development team.

MR. MROCZKOWSKI: Nick Mroczkowski with Stoiber and Associates, architect, the architect.

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MR. ANDRES: Good morning, Chairman Jordan, Erwin Andres, and members of the board, Erwin Andres with Gorove Slade Associates.

CHAIRPERSON JORDAN: Okay. You know the board certainly always hesitates in regards to off street parking relief and this is one where you're required to do 30 spaces but you're only going to provide eight. The other special exception relief I don't think that I have any issues with, or I don't know if the board any issues with it, I think we understand that but I would want to state for a minute, Mr. Andrews, so we can deal with parking but I want to check, is there anything else, because we're going to spend a minute on parking.

VICE CHAIR COHEN: Yes, I have a question with regard to, this is a 36 unit project?

MS. SHIKER: That's correct.

VICE CHAIR COHEN: I didn't see anything in the record about inclusions of zone units?

MS. SHIKER: Oh, so the project will comply with inclusionary zoning, there will be more than 4,000 square feet of the 25,000 square feet devoted to affordable housing. Those will be split half for 50 percent AMI and half for 80 percent AMI. It comes out to about six units.

VICE CHAIR COHEN: Thank you.

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CHAIRPERSON JORDAN: Well, let me ask some questions in regards to parking. I don't know if the board members have any other questions about parking, but Mr. Andres, does your parking inventory include projects that are also coming in line there? Not what's just presently there but your projects that this board has approved or that is already coming up out of the ground?

MR. ANDRES: Yes, so I understand that the board typically has concerns about the cumulative effect of our projects so the other projects that are in the vicinity of this project, they're actually on Florida Avenue, they're 1326 and 1348 Florida Avenue which actually this board approved. And a lot of the parking that was available for those sites are actually north of Florida Avenue. If you look at our study area it actually encompasses areas south of Florida Avenue and actually south of H Street. So we wanted to take into account areas that are around the sight but were not taking up by other developments that this board has seen, so. What you see is available for this development is actually exclusively for this development.

CHAIRPERSON JORDAN: What parking do we have on H Street in that area?

MR. ANDRES: Let me pull up the slide. So the H Street area, all of the parking on H Street itself is metered.

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And then in the residential areas to the north and south a significant number of them are RPP restricted as part of our TDM elements we are actually agreeing to restrict our residence from getting RPP.

CHAIRPERSON JORDAN: Yes, but the inventory, being north or south of Florida Avenue, isn't it the same inventory group?

MR. ANDRES: It is but the availability. There is actually a lot of availability north of Florida Avenue as was presented in the other two cases that you've reviewed previously.

CHAIRPERSON JORDAN: I thought we had at least three cases, three projects are going north right there at that little junction.

MR. ANDRES: Yes. Yes, that's correct. So the availability for those projects are geared to the north, so north of Florida Avenue there are available spaces and actually there are actually available because of the fact they're unrestricted. They're a lot of blocks north of Florida Avenue where, as you know H Street has a vibrant night life so a lot of people who come to the H Street area who can't find parking in and around H Street actually go north because there is unrestricted parking where they can park.

CHAIRPERSON JORDAN: I just know we've used that

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north street inventory because it was very low, I think it was 65 percent utilization at one point.

MR. ANDRES: Yes.

CHAIRPERSON JORDAN: And now I'm just --

MR. ANDRES: Yes. So the inventory that we did identified some available spaces much closer into H so that's what we're identifying. That and in our report, we identified that based on other projects that are within historic context we've identified that the demand associated with the building of this size is in the eight space range which is what we're providing. Because of the fact that there is a lot of transit availability that and our commitment to the TDM elements in our plan.

CHAIRPERSON JORDAN: Is that the demand for the residential or the demand for both residential and retail?

MR. ANDRES: That's for the residential however given the type of retail that's being proposed it's a neighborhood serving retail development. It's relatively small and consistent with a lot of the other retailers and restaurants up and down H Street, many of the employees actually live in the area.

CHAIRPERSON JORDAN: Okay.

MR. ANDRES: So, the intent and Ms. Snyder from Inside can talk about this, is not only patrons patronizing

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the sight but also providing jobs for a local neighborhood.

CHAIRPERSON JORDAN: Yes, but who's the proposed tenant?

MS. SNYDER: We have not identified the proposed tenant yet, however our partner Fundrise just opened Maketto which is a half a block away and that retailer in terms of demand that people that are working there that are actually parking they have 7,000 square feet of retail space, they have between 15 and 20 total employees and between 1 and 2 of those employees are actually parking, the rest are taking transit or walking to work because they're living in the H Street neighborhood.

CHAIRPERSON JORDAN: But that depends who the tenant is going to be, right?

MS. SNYDER: Our objective is to have retail that's neighborhood serving and we want people to walk and we also want those that are working in the retail to live nearby, ideally above our building.

CHAIRPERSON JORDAN: Yes. Yes, please.

VICE CHAIR COHEN: Okay. In reading the record I notice that there are a lot of options for people who, and this is a very youthful neighborhood, people, I understand do not have cars, is that correct? Can you elaborate on the availability of alternate transportation?

MR. ANDRES: So this actually this slide actually

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shows the availability of transit. There are several transit lines that are currently existing and obviously the District had made a significant investment in the street car which is hopefully will be up and running soon. And then in addition to that there is Zip car is available within two to three blocks of the site. So there are significant alternative means for patrons who choose not to drive and in this neighborhood it is, as you've mentioned, is fairly significant.

MS. SHIKER: There's also a very large bike share station right outside of the front door of the building.

CHAIRPERSON JORDAN: How many employees we suspect for this building?

MS. SNYDER: We've not identified the retailer yet, but based on, if we use Maketto as an example, between probably 15 and 20 depending on the level of patrons that are arriving during the day. So we've not yet identified the retailer.

CHAIRPERSON JORDAN: Will the retailer be required to provide transportation incentives to their employees?

MS. SHIKER: We've offered that for the residential use in our talks with DDOT, they did not have a concern that the employees would need that type of incentive given the mass amount of transportation and the other types of uses nearby.

CHAIRPERSON JORDAN: I got it, but we do. We have a concern about it. And what we're finding now, we keep

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talking about the employees but the employees are really coming from a lot of different places. Many do, don't get me wrong, do use the public mode of transportation but there's a few that we've now learned park within a good walking distance. It can be eight blocks away and so we just can't do a drive by to the employees and so we need to try to make some encourage for the employees and we don't know what kind of retailer's coming in there. I mean, one thought was to try to limit this by condition that it has to be neighborhood services retailer as opposed to destination kind of tenant and I'm still kind of focused on that in my head because it becomes an issue about enforcement and how do we do it.

But the problem is we keep saying about the board, we keep doing this guesstimations and guesstimations. We've heard from the Department of Transportation, a lot of these guesstimations have missed their mark. And so once these things are gone, they're gone and the community is the one who suffers. So you have not at this point, talked about anything about employee that you require that the tenant provide any incentives to its employees. Okay. Board, any other questions on this? I just it's a lot of parking relief.

VICE CHAIR COHEN: And Mr. Chairman, as a member of the Zoning Commission we have in many cases suggested a reduction of parking that meets the Department of

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Transportation's goals of alternative transportation. We need to get people less car centric in our city and because this is a very rich neighborhood of alternative transportations and I think I heard the applicant stating that this will be a neighborhood based retail, we may want to actually include in the zoning order somehow.

But I really am comfortable that this will not take up excess parking in the neighborhoods. I think there is enough. At night it's another issue and again, people have to understand that they have to not used cars and there are many other alternatives. There's Uber, there's car share, there's buses, there's lots of ways of getting around this neighborhood. So I think that the Zoning Commission is going into these thinking, is addressing the thinking of DDOT in trying to come up ways of reducing your traffic flow and neighborhoods.

CHAIRPERSON JORDAN: Right, and I appreciate that and I guess we could wait to deliberation to have that discussion. So I was just inquiring of the fill in the blanks so when we get to deliberation I can understand better.

MS. SHIKER: So we had not yet talked with DDOT about an incentive for the retail employees, however we would be willing to proffer a similar incentive to what we've done for the residential units for the retail employees so that that

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could provide additional incentive for them to take different modes of transportation.

MS. SNYDER: We also are providing twice the number of required bicycle spaces and we are willing to make those also accessible to the retail workers.

CHAIRPERSON JORDAN: Any other questions of the board?

MEMBER HINKLE: Yes, thank you, Mr. Chair. So you're not sure if these are for rent or to be sold?

MS. SNYDER: Our intent is that they'll be rent, apartments.

MEMBER HINKLE: So the parking would be rented as well?

MS. SNYDER: Correct.

MEMBER HINKLE: Okay, thank you.

CHAIRPERSON JORDAN: You don't know what the cost is going to be for parking if it's a condominium, et cetera or rental?

MS. SNYDER: We haven't yet determined the cost but it would be in accordance with market standards.

CHAIRPERSON JORDAN: Wouldn't it be that it's not market standards, might be below market standards?

MR. ANDRES: If you put it below market standard than it might, as to Ms. Cohn's point, might actually incentivize

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more people to own a car.

CHAIRPERSON JORDAN: Let's go over the TDM stuff. Let me see, I have a TDM, a secure on site bicycle parking for 27 bikes, on site bicycle repair facility, is that included?

MS. SNYDER: Yes, that's correct.

CHAIRPERSON JORDAN: No RPP and no visitor's permit and then all that would be recorded with covenant to run with the land and produce and also copied into the leases and any condominium documentation, the declaration and to be non amendable in the bylaws, correct?

MS. SNYDER: Correct.

CHAIRPERSON JORDAN: Transportation incentives to provide at least five years for the project, \$100 SmartCards, is that per year, and bicycle club membership and car sharing membership?

MS. SNYDER: Correct, that is per year.

CHAIRPERSON JORDAN: And we're adding to that for employees also, correct?

MS. SNYDER: Correct.

CHAIRPERSON JORDAN: Let's talk about the bicycle amenities, the marketing, you're market the project that this is not a parking facility per se and all that that you have here and the ride match, ridesharing, don't encourage car pooling. Okay. Did I miss any?

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MR. ANDRES: No, Chairman.

CHAIRPERSON JORDAN: I know we talked about the covenant running with the land, but ANC also tendered an additional one which I'm just not comfortable with, I don't think this board has jurisdiction to order it as a condition because it's not zoning related, but I understand you've told the ANC you're going to work with your best effort to try to get an H Street address for this property?

MS. SHIKER: That's correct.

CHAIRPERSON JORDAN: Board, anything else? Applicant, anything else in regards to these TDMs or anything?

MS. SHIKER: No, we do not have anything further.

CHAIRPERSON JORDAN: I don't know, board, anything else you need to hear in this case? Then let's turn to the Office of Planning and see where we are.

MS. FOTHERGRILL: Good morning, for the record, I'm Anne Fothergrill from the Office of Planning and we rest on the record in support of the requested relief.

CHAIRPERSON JORDAN: Any questions for your Office of Planning, board? The applicant, any questions for Planning?

MS. SHIKER: No.

CHAIRPERSON JORDAN: Is anyone here from the Department of Transportation on this case? Anyone for DDOT,

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I think we do have a letter of support from DDOT and you have agreed upon methodology with DDOT as to the study, transportation study, so. All right. Anyone here wishing to speak in support of this application? Anyone in support? In support? Anyone in opposition? Opposition please come forward, please.

MR. LABBE: Hi.

CHAIRPERSON JORDAN: Just take a seat please. Let me first ask, did you turn in your witness cards to the --

MR. LABBE: I have them right here.

CHAIRPERSON JORDAN: Would you give them to the court reporter please. Make sure your microphone is on.

MR. LABBE: It's green.

CHAIRPERSON JORDAN: All right. And your name?

MR. LABBE: Claude Labbe.

CHAIRPERSON JORDAN: Labbe?

MR. LABBE: Yes.

CHAIRPERSON JORDAN: Okay. Mr. Labbe, you have three minutes to tell us what's on your mind.

MR. LABBE: I challenge your assumption that the neighborhood is multimodal. It is multimodal, very true and that's where we're going. And I live about a block and a half away and so I live a block and a half away which means I should be parking south of H and it happens routinely I have to mark

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north of Florida so there's real tension there. And yes, we have multimodal options but all the neighbors are driving still. So I understand we're trying to get to there but I challenge you saying we're there, we're not. And I think it's valid to market to people who don't want to drive, but in 2015 a lot of people are still driving and I'm very uncomfortable with saying we just need eight parking spots.

I routinely see employees of the business on H Street coming to our street and move their car because they can only park there two hours at time, and they know the rules, I just think we're playing with the rules here, guys. So I support the building going up, it just has to be fewer units because we just can't handle what we have now much less another three units.

CHAIRPERSON JORDAN: Yes, that's kind of my point in the whole discussions. Well, I appreciate your concerns and it kind underlines some of the things that I raised in my conversation. And so you've actually seen people who live there parking north and they're moving their cars back and forth?

MR. LABBE: I've seen people who work on the H Street just, you know, from the 12th to 1400 blocks of H Street, there's are lots of people driving into work just for the establishments and some of them, like I just know who they are

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because I work from home. So I know who they are and they'll just move their cars as the day goes on so they can be on a different block or whatever and they don't get a parking ticket that way because they don't have Zone 6 parking which means they're from outside the area. And of course at night there's nothing at night so I'll base my social life on am I going to drive out of the area because I know if I'm coming back home Thursday, Friday, Saturday afternoon, you know, after dinner time it's not happening.

CHAIRPERSON JORDAN: Ms. Shiker, let me ask why is there 36 units? Why is there 36 units and not 18?

MS. SHIKER: This site is located as a type 2 site and the H street overlay and which encourages residential uses. It is an encouraged use, a preferred use in the H Street overlay and thus within the permitted height 36 units was the basically three floors of residential use above a ground floor podium of retail and it was with a mix of units. The goals here are to encourage residential use and to not place that residential use on the site when it can fit within the permitted boundaries. It would not be furthering those policy goals to not have that residential use but it's because it's what fits within the approve frame work.

CHAIRPERSON JORDAN: Yes, let me come back to, I don't want to be rude. Let me go back to the witness. Is there

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anything else you wanted to say to us?

MR. LABBE: No, I'm fine. Thanks.

CHAIRPERSON JORDAN: Yes, yes. Questions, board?

VICE CHAIR COHEN: Yes, I'm just curious since you do work and live in that area, first of all do you notice if those license plates are Maryland, Virginia or District? It's okay, I mean.

MR. LABBE: Nothing glaring me one way or the other, there's a mix of all three but I tend to think that the employees are usually Maryland or D.C. employees.

VICE CHAIR COHEN: Do a lot of those houses have parking as part of their, you know, existing houses, do they have parking?

MR. LABBE: Most of the existing house in that neighborhood do not have existing parking. But what I have --

VICE CHAIR COHEN: So they have to park on street?

MR. LABBE: So what I have noticed is some people started tearing out their back alley, especially the renovations, part of the same renovation is you have parking in the back with a garage door. And I've seen one or two times, actually on my block has actually put in parking in the back of the house. It's becoming a true amenity.

VICE CHAIR COHEN: Okay. And the current site has

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this building that poses as a library so does that have a lot of traffic coming to it, I mean it may be closed?

MR. LABBE: I mean, the current site is a blight. So the fact it's being developed is a good for the neighborhood.

VICE CHAIR COHEN: Okay, thank you for your answers.

MR. LABBE: Thanks.

CHAIRPERSON JORDAN: So thank you, appreciate it. Anyone else in opposition? Anyone else in opposition? Well, let me turn back to the applicant and the rebuttal. Let me ask you some questions. What is the basis? Why is it 36 units as I asked before, not the theoretical what needs to happen in the area, what is the project driven reason why it's 36 versus 18 versus 20?

MS. SHIKER: The number of units is always driven by what can fit on the site and what you purchase the land for. And this was a disposition of land with the goal of providing residential use. This is a District land that's being disposed of for residential use with ground floor neighborhood serving retail, that's the intent of the disposition and it was intended that it would fit within the zoning boundaries which is how you get to the 36 units.

CHAIRPERSON JORDAN: What's your return of investment?

MS. SNYDER: The return of investment is approximate

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6 percent current cost.

CHAIRPERSON JORDAN: 6 percent?

MS. SNYDER: Yes.

CHAIRPERSON JORDAN: With 36 units?

MS. SNYDER: Correct.

CHAIRPERSON JORDAN: I know we don't have any financials in the file but. Okay. Any other questions for --

VICE CHAIR COHEN: No.

CHAIRPERSON JORDAN: Okay, anyone else. All right. Anything else you want to present?

MS. SHIKER: If there are no other questions, we feel like we've presented the case fully within the documents and exhibits and we'll stand on the record, thank you.

CHAIRPERSON JORDAN: All right. Then is the board ready to deliberate in this case?

VICE CHAIR COHEN: Yes.

CHAIRPERSON JORDAN: All right. This is one I'm really slightly troubled by but I don't know what the alternative is. Again, we talk about the parking impact on communities all the time and we keep doing these guesstimations, guesstimations. We have had evidence and testimony here by a neighbor to this property that indicates that are people parking from the other facilities throughout

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the neighborhood. I know we have the transportation plan and studies and these are just guesstimations but there's stuff that's missing. We also know, although not presented in this case from our most recent couple of cases, that DDOT has now found that during their inventory and survey based upon what we've estimated, what they've estimated in the past to see what the realities are, they're missing their mark.

I think the witness brought up a good point about why 36 but I think the applicant has answered that. Although we don't have the supporting documentation, we certainly take your word upon oath that it's only 6 percent return which saves you. Because if we did not have that, we wouldn't go forward here today and I certainly would want to see the financials on it and I will want to see the rate of return. Because it's not just maximizing what you can put on these properties, it's what's reasonable and what can lessen the impact upon the community and that's one of the standards, as you know, Ms. Shiker, for a variance test. It's not what we can maximize on the property, it's minimizing the impact of community, right?

So I kind of gave you a bone to find out what that rate of return of investment is. Was there any fluctuation? You get 25 or 30 than we might have had a different issue, for me. I think that we've also added here with the change in TDM

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is something now that I can support but I'm still guarded in regards to all of this kind of relief because, and especially an area like H Street where there's all kinds of activities and there's at least three or four projects coming, at some point it's going to bubble and I don't, you know, if ten years from here, maybe even five years from now we say, when all these projects come align, oh my. As we talked about three, four years ago, five years ago we said, give us some numbers, are these things working? Now we're finding out the numbers may not be working, so that's all I have I say about it right now. Any other input?

VICE CHAIR COHEN: Yes. I know DDOT is refining a number of their studies, I hear testimony about this all the time and in sometimes, I do believe there are neighborhoods that they have under estimated the number of parking statements but I also know of many neighborhood where they over estimated and there are parking spots that are going unused. So I still think that we don't have an extremely good handle, although DDOT has committed to, and Mr. Andrea's probably is even more familiar than I am, where they are with a lot of their studies.

I do know that we, and the ANC also has approved this. I don't know if you got to that part yet, Chairman, but I think that we are at a cross roads, where there is a great deal of development, that there are a number of people beginning to

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recognize that there are alternatives available to them in commuting and not always reliable, but neither is a car anymore because the streets are choked. And they're not only choked with cars but the emissions from those cars. So I think we need to proceed, as the zoning commission is and DDOT is attempting to do, to try to reduce the number of opportunities because it is an opportunity if you have a convenient parking space to have a car. I mean, who wouldn't if it's priced lower than the market as you indicated. What we have to do is just decide as a community and I think we have, to lessen the availability of cars on our streets. And again, it's not just a matter of convenience it's a matter of health issues as well.

CHAIRPERSON JORDAN: Okay. Anyone else? Ms. Heath.

VICE-CHAIRPERSON HEATH: It's not coming up.

CHAIRPERSON JORDAN: Are you not coming up?

VICE-CHAIRPERSON HEATH: There it is, I couldn't see it. I am tending to agree with Ms. Cohen. The city clearly isn't where we would like it to be in terms of our dependence on cars, but I do agree that if we're going to continue to develop in all of these new neighborhoods and encourage more residential and retail, we have to encourage people to not be as reliant on cars and to continue to push for alternative means of transportation. I think we're probably at a point where

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we're going to see a choke at some point and maybe that will be the push that will get us there. But I do think that we have to do what we can to encourage people to not rely on vehicles as much as they are today.

CHAIRPERSON JORDAN: With that, I would, especially in light of the fact that this is a city-owned property then, it's plan for development and disposition with the intent to better aid the community, et cetera. And we heard testimony that this is a very blighted piece of property, and in light of the amended TDM measures, I would go ahead and move that we grant the relief requested with the modified TDM as we discussed here.

VICE-CHAIRPERSON HEATH: Second.

ADMIN. JUDGE SCHNEIDER: And let me add to that the fact that we have a return of investment of just six percent based upon the numbers, I think that really helped carry me over on this one. So that would be my motion, motion made and second. Additional discussion? All those in favor of the motion aye.

(CHORUS OF AYES.)

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

MR. MOY: Staff would record the vote as 4 to 0, this on the motion of Chairman Jordan to approve the application

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with the amended TDM measures decided by the Board. Second the motion of Vice Chairperson Heath, also in support Ms. Cohen, Mr. Hinkle, 4T vacant, motion carries, sir.

CHAIRPERSON JORDAN: All right. I guess I'll see a summary order please.

MR. MOY: Yes, thank you.

CHAIRPERSON JORDAN: Thank you. Let's take five minutes and we'll come back with, let's just go ahead and do the appeal because we have the zoning administrator here, we don't want to keep them waiting. Let's do the appeal. Five minute break.

(Whereupon, the above-entitled matter went off the record at 10:40 a.m. and resumed at 10:47 a.m.)

CHAIRPERSON JORDAN: Okay. Let's proceed on, please.

MR. MOY: Thank you, Mr. Chairman. To the table I believe are the parties to appeal number 18980. This is the appeal of concerned citizens of Argonne Place at property 1636 Argonne Place Northwest. Mr. Chairman and the Board, I believe in the record they're from the appellant motion to waive time requirements to file a revised pre-hearing statement on your Exhibit 32 as well as in response by DCRA partial motion to dismiss for untimeliness under Exhibit 35.

CHAIRPERSON JORDAN: I think that original motion to

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dismiss arose from the property owner, Mr. Moy.

MR. MOY: Thank you, sir.

CHAIRPERSON JORDAN: All right. Please, identify yourselves.

MR. TONDRA: Maximilian Tondra, DCRA representing the zoning administrator.

MR. LE GRANT: Good morning, Chairman Jordan and members of the board. I'm Matthew Le Grant, I'm the zoning administrator at DCRA.

MR. SULLIVAN: Good morning, Marty Sullivan on behalf of the property owner.

MR. GAMBRELL: Good morning, Alan Gambrell, one of twelve appellants on Argonne Place.

MR. RUEDO: Good morning, my name is Guillermo Ruedo, I'm an architect, and I'm here to support the definitions of Mr. Gambrell and provide expert witness testimony. Thank you.

MR. BEHRROOZI: Good morning, I'm Cyrus Behrroozi, I am an appellant.

CHAIRPERSON JORDAN: Do we have Mr. Ruedo as an expert witness, documentation, do we already have that? Did you submit that in the file? We do have that?

MR. GAMBRELL: Yes, sir.

CHAIRPERSON JORDAN: Have you testified in front of this board before, Mr. Ruedo?

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MR. RUEDO: Yes, sir. Many times.

CHAIRPERSON JORDAN: And you've been declared an expert, Mr. Ruedo?

MR. RUEDO: Not as an expert.

CHAIRPERSON JORDAN: Can you help me, which exhibit is the resume or vitae of the expert witness contained in?

MR. GAMBRELL: I'll be with you in one moment.

CHAIRPERSON JORDAN: Sure, thank you.

MR. GAMBRELL: Has anyone found it yet?

CHAIRPERSON JORDAN: I don't see it, what exhibit do you think it is in?

MR. GAMBRELL: I had a copy, I can't find it. It should be Tab R.

CHAIRPERSON JORDAN: Tab R. Let me pull that up. R? To your pre-hearing statement?

MR. GAMBRELL: Yes, it's called a preliminary witness list.

CHAIRPERSON JORDAN: 22.

MR. GAMBRELL: I'm sorry, yes, 22.

CHAIRPERSON JORDAN: Got it.

MR. GAMBRELL: If you're referring to that number.

CHAIRPERSON JORDAN: I don't see a resume, so Mr. Ruedo, give us your background, please.

MR. RUEDO: Yes. I'm a practicing architect in the

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District of Columbia since 1991, twenty-five years of experience, more than, and seventeen years of practice on my own, my own office, Singletary Ruedo Architects which I closed two years ago. I currently work as an architect in town and work on a variety of projects.

CHAIRPERSON JORDAN: What kind of projects?

MR. RUEDO: Everything from residential in the District, residential projects all the way up through institutional projects.

CHAIRPERSON JORDAN: You're educational background?

MR. RUEDO: A Bachelor of Architecture from Carnegie Mellon University, 1987.

CHAIRPERSON JORDAN: And you said that you've been licensed to practice architecture since when in the District of Columbia?

MR. RUEDO: 1991.

CHAIRPERSON JORDAN: '91. Do any of the other parties have any objection including him as an expert witness? Anyone?

MR. LE GRANT: Yes, I do to the extent that he wants to testify about architecture, that I think I would respect but where he is going to assert or interpret the zoning regulations I would like to reserve judgment on his ability to be an expert.

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CHAIRPERSON JORDAN: Okay. Mr. Sullivan.

MR. SULLIVAN: I would agree with that and just stay neutral to the extent that I haven't seen a resume.

CHAIRPERSON JORDAN: Okay. So we will reserve that and take the testimony limitedly, and we will take it as the Board wants to interpret it.

MR. GAMBRELL: May I speak to the question about Mr. Ruedo's qualifications in terms of zoning regulations and building codes?

CHAIRPERSON JORDAN: Please.

MR. GAMBRELL: I think it's fairly logical that someone who is an architect and has practiced in D.C. would be quite familiar with the zoning regulations as a course of actually completing architectural plans that actually do comply with the zoning regulations and building codes.

CHAIRPERSON JORDAN: Not necessarily. Sitting right here at this table, I see it all the time, not necessarily.

MR. GAMBRELL: In this case we've seen that as well.

CHAIRPERSON JORDAN: We're not going to have that. Okay. This thing has kind of gotten way out because there's been a lot of revisions et cetera.

First of all, I accept your motion of filing for out-of-time filing unless there's some big objection from it.

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The motion to dismiss for timeliness. The allegation here is that everything that there was notice of this, it's way back when, that there was notice as recent as, I mean, as long ago as 2014, I believe September or August 2014, of the decision of the zoning administrator. Since that time there's been several stop work orders in this case and then there's been some revisions to the permit. The last revision, the revision in, I believe, the stop work order in December 3, 2014 as well as the revision before that, all pertain to the cellar calculations and the retainer wall, would that be correct?

MR. TONDRO: Yes.

CHAIRPERSON JORDAN: And I think you agree with that from the appellant's side based upon your briefs. As I sit here now I would believe that everything else is not on the table because they would be time barred based upon even from your documents that you filed. But there has been some changes that had occurred in regards to the cellar area and the retaining wall as it effects the calculations. So let me hear to the contrary. What do you think, why that should not be the holding, the following finding of this Board.

MR. GAMBRELL: Thank you and apologies for the comment earlier. As you know, we've spent quite a bit of time becoming familiar with DCMR and, of course, 3112's provision on exceptional circumstances and know that this Board had a

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rather robust discussion in 2014 in case 18793 expressing a desire to establish some clarity for the public on what is meant by timeliness. And we do believe we meet that test on multiple levels.

First, it's our belief that the sixty-day clock actually started ticking on December 19, the day the zoning administrator approved the new permit which amended the original permit which was dated September 9, specifically as referenced as such. Secondly, as for the revised permit approved December 19, it references and modifies the first permit creating a basis for appeal. Third, the appellants can only enact upon publicly available information and we were only able to secure construction plans from DCRA's record room in early November so that we could examine the plans in detail as we were going off the copies provided by our neighbors who live on each side of the subject property.

We only got access to the documents supporting the September 19, 2014 first permit actually in March of 2015. As the DCRA records room had explained to us, the permit was issued but not paid for which really kept it out of our hands. Fourth, our timeliness was obvious as we immediately started conversations with DCRA and raised questions during the sixty-day period after September 9 when the first permit was issued working with the zoning regulatory process. So really

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this is a matter of where we've got ongoing email dialogue starting on October 29 and it just didn't seem appropriate nor do I think it is appropriate to go running off to the Board of Zoning Adjustment when you have an active conversation going with the regulatory body that there is possibly a problem and that is a problem that they would like to perhaps address. And, in fact, the issuance of a stop work order which is my fifth point, is confirmation that relying upon that regulatory process was appropriate because the stop work order was in fact issued on December 3rd.

Sixth, what we are appealing in the first permit also applies to all of the other permits later issued, namely the GFA calculation errors and the height and measurement mistakes. Those same errors are contained in all of the approved construction plans in the form of building and zoning code summary sheets on construction drawings that list --

CHAIRPERSON JORDAN: Let me stop you one second.

MR. GAMBRELL: Sure.

CHAIRPERSON JORDAN: Did those plans change and the permit change from on those areas of parking. The height, did that change from the September 2014 permit? So when those revised permits came, did those areas change?

MR. GAMBRELL: That's a difficult question for us to answer because the only revisions that we've been provided with

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have involved the plans regarding the retaining wall and the front and the back grade. We haven't been provided with any revisions to the actual living levels other than the lower level.

CHAIRPERSON JORDAN: Okay. Anything else you want to say?

MR. GAMBRELL: Yes, I might add that we have asked DCRA but have never been given the approved permit drawings for the original permit that would show the revised drawings to accompany the responses to DCRA's comments for the interior spaces for levels one and higher, which are dated June 2014. So I think that's my last point, but I think those are a good number of reasons why we feel like we're being timely.

CHAIRPERSON JORDAN: DCRA or the property owner want to respond first?

MR. SULLIVAN: Thank you, Mr. Chairman and members of the Board. On behalf of the property owner, I'll point out the problems with Mr. Gambrell's reasons.

First of all he states that the sixty day started on December 19th. We know that's not true, that's only as to the revision that was made. The clock started, well, there's a couple of dates where it could start. There's one case where the Board said the PIVS notice of the zoning review approval was the starting date and we're not arguing that, but that would

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have been March 2014. And then the most commonly used date would be the building permit date with a little time allowing for posting of the permit and for people to gain some knowledge of that. And we could have the property owner testify that the neighbors were very aware of this project even before the permit was issued and the permit was posted.

But we have a solid date that everybody agrees on and that's October 28th when Mr. Gambrell became involved in the project.

CHAIRPERSON JORDAN: But you skipped something.

MR. SULLIVAN: Well --

CHAIRPERSON JORDAN: Because the building permit was actually issued on September 9th.

MR. SULLIVAN: The permit was issued on September 9th.

CHAIRPERSON JORDAN: Right.

MR. SULLIVAN: Yes. I mean, I would argue that's a reasonable date but even if you didn't want to use that --

CHAIRPERSON JORDAN: And the posting was reasonably around that period of time?

MR. SULLIVAN: Yes. And work started immediately. The appellant acknowledges that neighbors reviewed building permits and architectural plans in October of 2014. So they had the plans. And they've noted that they raised issues

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regarding FAR and lot occupancy limitations and presumably they had the PIVS statement at that point too. So the starting date as to every issue but the changes that were made in June actually, regarding the retaining wall.

CHAIRPERSON JORDAN: I'm not there yet, let's stay in 2014.

MR. SULLIVAN: With every other issue.

CHAIRPERSON JORDAN: With the first revised permit.

MR. SULLIVAN: Right. I'm separating the issues. And we know that we can separate the issues from the Woodley Park case which took it in two sections and said these items weren't changed and so a year later you can't appeal those but these items have changed and you can appeal those.

CHAIRPERSON JORDAN: Which we're going to get to, which I want to get to.

MR. SULLIVAN: Okay. Regarding his point about having active discussions with DCRA, Woodley Park also addressed that issue and other cases have as well. That the particular strategy that an appellant takes, whether it's negotiating with the property owner or negotiating with DCRA does not toll the time period required and that's for good reason. Because it's not just for the appellant to figure out whether or not to file an appeal, it's also to protect the interest of the property owner who moves forward in reliance

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on the permit being issued.

Regarding extraordinary situations beyond the control, I don't see that here. They had the plans in October, he hasn't mentioned any extraordinary situations beyond his control that would have prevented them from filing an appeal, but there's also two requirements, it can't prejudice the property owner as well, that extension by the Board. And an extension doesn't mean you get another sixty days, it means a reasonable extension in regard to any extraordinary circumstance which again isn't here in this case.

The stop work order issued in December which was quickly corrected and then lifted and then the revised permit issued, was on a very limited issue, the same issue was addressed in June because the zoning administrator, shortly before the scheduled hearing in May, revoked that decision in December and that the plans were corrected again to address that situation. That revised permit was issued in June.

CHAIRPERSON JORDAN: Wait a minute, you skipped again. The revised permit after the December 3, 2014 stop work order, the revised permit was actually December 18th, I think.

MR. SULLIVAN: Yes.

CHAIRPERSON JORDAN: Is that correct?

MR. SULLIVAN: I'm not certain on that date. I know that December 19th was the notice to the neighbors.

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CHAIRPERSON JORDAN: All right.

MR. SULLIVAN: Right.

CHAIRPERSON JORDAN: So what was different in the December, I want to say 19th. My memory is close enough, December 18, 2014 revised permit that was not in the September 9, 2009 permit? What was changed?

MR. SULLIVAN: I'll mostly defer to Mr. Tondro on that.

CHAIRPERSON JORDAN: Okay.

MR. SULLIVAN: In relation to the rear yard, not rear yard, but the measurement of the grade at the rear as it relates to calculation of FAR on the lower level and whether or not that space adjacent to that grade was included or not in gross floor area because that had an impact on the FAR count. I think that's all I have.

I would point out also that the September 9th permit was actually, it's almost ninety days prior to the first stop work order being issued so there was no activity and construction went forward just as it did after December 18th all the way up until the second stop work order. So I think that's all I have on that point, thank you.

CHAIRPERSON JORDAN: Okay, thank you. Mr. Tondro.

MR. TONDRO: Good morning, Mr. Chair, members of the Board. Just to follow up on Mr. Sullivan's, I would refer you

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to page 7 of appellant's revised statement, and you see there that they state that the original demolition --

CHAIRPERSON JORDAN: Isn't that the one that says timeline?

MR. TONDRO: Yes, factual background timeline, right. Where it says --

CHAIRPERSON JORDAN: Yes, and I actually took that out because I found a key.

MR. TONDRO: Okay. Fine, thank you.

CHAIRPERSON JORDAN: Because it says timeline permits issue, variable FAR and lot occupancy calculation.

MR. TONDRO: Precisely. Thank you. I just wanted to call your attention to that. In terms of the issue, I think it's a fairly narrow one, but the issue is that on December 18th that revised permit was based fundamentally on a determination by the zoning administrator that the lower level which previously he had confirmed based on the applicant's representations was a cellar. In other words, the ceiling height was less than four feet above it, the adjacent finished grade was actually a basement. There was some inconsistencies in terms of the plans that were presented and as a result the appellant had to come back, not appellant, I'm sorry, the applicant had to come back and submit revised plans. The zoning administrator approved that. So the only thing that

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was affected at that time, the only issue was the rear of the building and the grade, the adjacent finished grade at the rear of the building so that --

CHAIRPERSON JORDAN: That all changed between the September 9, 2014 and the September 18, 2014?

MR. TONDRO: Yes, sir.

CHAIRPERSON JORDAN: So that was the change of grade calculation, well, where the grade actually started?

MR. TONDRO: Right. It was a question of what the grade was, the determination of the grade, that then kicked over and determined whether the lower level was a cellar or whether it was a basement and then that basis then it was a question that resolved the issue of whether the gross floor area and the FAR complied with the zoning or not. So it all hinges on that definition of lower level, is it their basement or a cellar, and that in turn hinged on the rear grade determination. So that was the subject of the revised permit on December 18th and it was again the subject, that one was then re-revised, the second revised permit, again for that single scope for the June 23rd permit that was issued.

CHAIRPERSON JORDAN: Thank you. And I appreciate that. I'm sorry, Board, any questions? Now, here's the other thing that I did not see in any of the property owner nor the DCRA issue. Tell me what happened because I'm clear and I

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don't know if the Board's clear in regards to the timelines. But the June 23rd second revised permit, what did we change in that?

MR. TONDRO: Basically what had happened was the revised permit, just to sort of start from there, the revised permit proposed a retaining wall at the rear of the property attached to the exterior of the building, in other words, coming out of the rear yard. It was determined subsequently based on a site visit conducted by the zoning administrator that that would make the existing non-conforming parking spaces increase their non-conformity, which is not allowed, and that was the reason for the revocation of that revised permit. The permit holder, the applicant, then came back and proposed instead to take that retaining wall and move it as it were inside the building envelope, to carve out a niche of the building itself. As a result, they would not change the rear yard, it would not change the existing non-conforming parking spaces that were there, so that was the changes. Basically taking the retaining wall and moving it in.

CHAIRPERSON JORDAN: Right. I got it, Marcie, I got it. This time, somebody, I got it. I'm trying to stay where we are, gang. So that's all that changed?

MR. TONDRO: Yes.

CHAIRPERSON JORDAN: How does that not make. If we

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assume what you are saying is true and taking the argument. No, you're not doing that yet. Stay with me, stay with us. We're altogether with this, we're going hold hands and sing Kumbaya and everything. But we have a process and procedure, it's not an open discussion. So, based upon what's been raised by the appellant in their brief and their contention, if we assume that the other issues are barred by timeliness, doesn't the June 23, 2015 second revised permit make the overall appeal moot? What's remaining?

MR. TONDRO: Yes, it would make the appeal moot except to the extent that the appellants would revive their challenge to the revised permit and apply it also to the second revised permit.

CHAIRPERSON JORDAN: Now stay with me on that. So what's the difference in your dimensions regarding the retaining wall in a June 23rd permit versus what's in the appellant's argument about the retaining wall?

MR. TONDRO: I believe it's the same height. I believe that the width or the depth has increased and whereas before the retaining wall was as were open to the sky, now there's a carve-out of the lower story of the rear of the building. The rear wall of the lower level is pushed back and then there's the grade change in front. So the retaining wall is pushed in as well.

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CHAIRPERSON JORDAN: Right. But from the dimensions of the retaining wall --

MR. TONDRO: I believe the height is the same so I don't think it changes the grade calculations, the only issue is the width. The width was made, it was made deeper. I believe the first one was something of a one foot wide and now it's significantly deeper.

CHAIRPERSON JORDAN: Okay. Now, let's turn back to the appellant, and although we normally don't give that aspect of rebuttal, but let me go ahead, I see that that you might have some other input.

MR. RUEDO: I apologize for the interruption but I just wanted to amplify --

CHAIRPERSON JORDAN: Are you testifying as an expert or are you testifying as the representative of the appellant?

MR. RUEDO: Well, I'm trying to characterize the existing conditions versus what he's stating as the revision to the permit. So it's clarifying what actually revised in the permit.

CHAIRPERSON JORDAN: Okay.

MR. RUEDO: Because the grade was changed.

CHAIRPERSON JORDAN: Go ahead, let's step through it. Let me hear what you have to say.

MR. RUEDO: It's just that the stated reason for

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changing the retaining wall configuration --

CHAIRPERSON JORDAN: Wait a minute, you're just talking about the June 23rd second revised permit?

MR. RUEDO: Mr. Tondro stated that the first revision --

CHAIRPERSON JORDAN: That was in December.

MR. RUEDO: That was in December was revised because of the non-conformity of the parking spaces because the retaining wall that they showed --

CHAIRPERSON JORDAN: Revised for parking spaces? He didn't say that for the December, did they?

MR. TONDRO: I think what Mr. Ruedo is saying, I was explaining why it was that that revised permit issued in December was revoked by the zoning administrator because when we went to the site visit, he realized that the location, the proposed location, under that revised December permit would have placed the retaining wall that changes grade in part of the existing non-conforming parking spaces.

CHAIRPERSON JORDAN: But that's what it was regarding the second revised permit in June 23, 2015, that's the difference between the September 8th?

MR. TONDRO: Yes.

MR. RUEDO: It's one of the differences, but one that's okay for discussion now because the second revision

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under the June revision, move the retaining wall as Mr. Tondro states, into the footprint of the building. Right, it's basically within the footprint of the --

CHAIRPERSON JORDAN: We're not arguing, go ahead, I got you.

MR. RUEDO: I'm not arguing. I'm just trying to describe that the stated reason for moving the retaining wall was to correct the additional non-conformity that was created, right. The retaining wall made a --

CHAIRPERSON JORDAN: I understand what you're saying, I'm waiting for you to get to your next point.

MR. RUEDO: So the next point is that the new revision still has a non-conformity that's not allowed.

CHAIRPERSON JORDAN: I'm good, that's what I understand.

MR. RUEDO: It's because of the grade of the parking space is greater than what's allowed. That wasn't stated so I'm just making sure that you understand that the parking spaces as presented by the applicant still create a worse condition. I'm not saying that sixteen feet is, there's a new condition that adds to the non-conforming nature of the parking spaces. Because before you could park on a piece of concrete that was flat, now the applicant is asking to park on a twelve percent grade. There's other technical issues as well, but

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at basis that's what I'm trying to amplify in Mr. Tondro's description. The new revision doesn't change the additional non-conformity, it just makes it different.

CHAIRPERSON JORDAN: Okay. Is there anything else?

MR. GAMBRELL: May I? Two points, I just wanted to, not that this is an excuse, but none of the appellants are attorneys, so my apologies if I misstate some legalese.

I want to get back, however, to the language of extraordinary circumstances in the regulation and I think that the fact that we had an extremely difficult time getting the construction plans which were the entire basis of our appeal, in a manner where we could actually analyze them and make sense of them. It did in fact take some time to have that happen and we did not have them in hand as of October 28th or 29th. In fact, that happened sometime in November, I'd say approaching that sixty-day period from September 9 in combination with what I mentioned earlier, and after a discussion with DCRA it was very much a process of trying to resolve the problem.

But I will get a little lawyer on you and point out in the research we did I looked at the Sisson case, and I think it's quite relevant where it speaks to the appellant not being chargeable with notice as soon as the first permit was issued, that the various permit applications contained errors of

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omission or were otherwise misleading in that they did not reflect all existing and planned improvements accurately and consistently. And that is exactly what we're dealing with here on these constructions plans. It's so obvious and transparent, and I mean no offense to that, but that, in fact, is the case.

CHAIRPERSON JORDAN: Board, any questions on this, on the motions? You know, the way I see it, I think the Board's hard-pressed to not find the lack of timely filing regarding those matters that were not changed as of October 2014. What was my exact date, October something 2014 by the applicant, the appellant's own admission. The problem is there's no provision for just having the dialogue going back and forth. It's clear in your record established over and over again the conversations, what you were aware of. In fact, you even admit what was aware of in March, but you certainly are aware as of September 9th of those things which were in that building permit of September 9, 2014.

Further, as to the action taken by the appellant in regards to October 2014 conversation with the zoning administrator, you were well aware of what was there and it was an issue permit back in September 2004. I do think that there are remaining issues for this Board, although we did not get a, you can look at it a couple of ways, we did not re-amend

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the appeal to conclude the June 23rd changes, however, that just happened so we would certainly take that as your oral motion to include that revised building permit for us to hear evidence. Now, whether or not the zoning administrator erred in regarding the retaining wall as it reflects the change of rear grade and it's effect upon the parking requirements, that's where I see it as the only three issues I see that remain. Everything else I think is time barred. Board? Anybody else, response?

So, in that case then, I would move that we would agree as to the motion to dismiss for timeliness on those issues, other than the ones that I talked about, that being the parking space, the rear retaining wall and the rear grade issue, those would be the only ones that are remaining, so that would be my motion. Anyone second or third it?

VICE-CHAIRPERSON HEATH: I'll second.

CHAIRPERSON JORDAN: Motion made and second, additional discussion? All those in favor aye?

(Chorus of ayes.)

CHAIRPERSON JORDAN: Those opposed nay, the motion carries. Mr. Moy, let's go ahead, let's go through it. Go ahead.

MR. MOY: Okay. On the Chairman's motion and second by Vice Chairperson Heath, the Board vote is 4 to 0, the motion

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carries, sir.

CHAIRPERSON JORDAN: Okay. Now, so that we can get this limited and put into perspective, I'm going to ask the appellant to tell me what are the claims of error in the June 23, 2015 revised permit in those areas that we talked about? Do you understand any of that?

MR. GAMBRELL: Yes, I do. And my apologies if I crossed the line into an earlier permit because there are so many leading lines.

CHAIRPERSON JORDAN: I understand but let's try to keep it if we can.

MR. GAMBRELL: Sure. May I spend about five minutes getting testimony from written comments?

CHAIRPERSON JORDAN: Yes, go ahead, whatever you want to do because I think we're probably 15-15 on this at best.

MR. GAMBRELL: Okay.

CHAIRPERSON JORDAN: To have discussion because you've already briefed us on it and I just want to hear orally and just update us if you would.

MR. GAMBRELL: Okay. Again, thanks for your time. The appellants are twelve individuals who live on Argonne Place, a short block and we care very much about our neighborhood and our city, but I just wanted to make very clear that this case is not about our hopes, wishes and desires, it's

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very much around having the zoning regulations enforced which is, you know, clearly in everyone's benefit.

As we did our research, there was a certain beauty we found with the zoning regulations in terms of their interrelatedness, how the words and definitions and requirements are all interrelated and connected to each other, and I don't know how many people have said that zoning regulations are beautiful, but I think they are. However, if you don't adhere to one requirement, chances are you're going to create another problem somewhere else, and you're going to unleash a cascade of errors. I came up with the term, it's like a regulatory alarm bell, and that's what happened in this case.

We actually think our case is quite straightforward, however, this cascade effect has created all of this complexity and with complexity comes errors. And as is already been shared there, there have been two stop work orders and from the handout you have, I hope you have in front of you, an ongoing series of zigzagging efforts to alter the rear grade, errors in measurement of building height, a FAR of 2.4 which is way, way over the 1.8 limit for R-5-B.

CHAIRPERSON JORDAN: Okay. Thank you. Excuse me one second.

MR. GAMBRELL: Sure.

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CHAIRPERSON JORDAN: Does the --

MR. GAMBRELL: I gave them copies, yes. First, and I'll try to make this brief, are grade measurement errors in the front and back of the building. You have the handout in front of you. This was also included in our pre-hearing statement, the first few pages. And it's pretty much this clear. At the front of this row house the grade is over four feet no matter where you measure it from. Whether you measure it at the entry way, which I think is at seven feet six inches or if you measure it from the walkway in front of the building where it's 4.2 inches --

CHAIRPERSON JORDAN: Why don't we move to rear grade.

MR. GAMBRELL: Okay. And by the way, four feet two inches by DCRA's own notations in the plans. Okay. At the rear grade the grade is marked seven feet six inches and again seven feet nine inches, both of those as you know are basement grade. Over the past year, four revised grade drawings have been submitted and mostly rejected starting out with a straight but inaccurate rear grade to three later versions, each more crooked and jagged than the one before, again creating that cascade of errors I spoke of. The latest one that you have before you is the grade --

CHAIRPERSON JORDAN: What do you claim the grade is, the grade error from the second revised permit on this June

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one? What's the, I don't see your, what's the difference you're claiming there?

MR. GAMBRELL: Between the --

CHAIRPERSON JORDAN: Where we are now and based upon the June 23rd permit.

MR. GAMBRELL: Well --

CHAIRPERSON JORDAN: That would be your last box here?

MR. GAMBRELL: Yes, sir. Well, I could get right to the heart of the matter which is --

CHAIRPERSON JORDAN: Excuse me, let me ask a question, is this writing down here that we're supposed to read? No? I don't know what I'm missing, that's --

MR. GAMBRELL: Sure. All right.

CHAIRPERSON JORDAN: You see what I, at the bottom, for the record, the bottom on page 2 on the document that we will accept, I don't know what exhibit number we are, let's see, Appellant's Hearing Exhibit 1 which is identified as, it has the first page it says Front Gate of 1636 Argonne Place and I'm on page 2 of that, the bottom right-hand, I don't know if I'm missing something there. Is that --

MR. GAMBRELL: Yes, that's DCRA's or the architect's writing, would you like me to read it, see if my eyesight is better than yours?

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CHAIRPERSON JORDAN: Well, if it's relevant. So if it's not part of your argument then it's something I just --

MR. GAMBRELL: Yes, it's on the plans.

CHAIRPERSON JORDAN: Okay.

MR. GAMBRELL: Okay. We're talking about the second permit revision, is that correct?

CHAIRPERSON JORDAN: Yes.

MR. GAMBRELL: You're really putting me to the test here. The text reads from the top down, beyond existing party walls to remain and then it says twelve percent grade per the permit number, no negative impact to existing parking pervious surface. And then below that it reads concrete retaining wall refer to structural footer per structural, so.

CHAIRPERSON JORDAN: So go ahead, please.

MR. GAMBRELL: The latest version, the one we just discussed, puts the grade atop a retaining wall that if built, would be located within the actual footprint of the building, within the actual footprint of the building. The first three proposals have met with resistance from DCRA and triggered two stop work orders, the latest proposal is a grade change, again, that's the one before you, that again unleashes a cascade of errors. There are also questions about the approved retaining wall permit and plans in terms of failure to show necessary structural changes, failure to contain the new twelve percent

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berm and no parking surface on the new berm.

I might add that, if it hasn't been clear already, that none of these changes have occurred. They confirm that the lower level is a story above grade as defined in the regulations, meaning the entire lower level should be considered a basement. The second error relates to a building height measurement point in the front which is established at the midpoint of the front building façade. And again, it's --

CHAIRPERSON JORDAN: We're interested in height, let's just go ahead. We're dealing with the rear --

MR. GAMBRELL: Oh, you want to stick with the rear.

CHAIRPERSON JORDAN: Rear grade has an effect on parking, the parking spaces being illegal in your opinion, and the retaining wall.

MR. GAMBRELL: Okay. Regarding the retaining wall and the parking spaces, and this actually goes beyond the retaining wall, and I would take issue with the question or the statement of Max Tondro that the parking non-conformance has been improved because the rear yard is sixteen feet as it exists. So no improvement has occurred nor will one occur with the insertion of a retaining wall in the actual footprint of the building. Having said that, the permit fails to provide two 9 by 19 regulation spaces. As I mentioned, the rear yard

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is only sixteen feet. The zoning administrator actually is on record with our Ward 1 council member that when it comes to looking for exceptions to parking that they should come before this body and that was in a communication a few months ago. In addition, the scenario envisioned with this retaining wall would create an unsafe parking situation with a twelve percent grade that is well over D.C. accessibility standards of two percent and create --

CHAIRPERSON JORDAN: That's not a zoning issue, that's a construction issue, is it not?

MR. GAMBRELL: It's actually referenced, if you take a look at the definition in parking, there's actually a reference to accessibility standards. In addition, it would create a parking service that is contrary to requirements that parking services are stable, firm and slip resistant. And the zoning administrator, DCRA, rather has made the contention that this is a driveway and thus complies with the twelve percent slope, however this is not a driveway. To my, I'm a novice on this, but to my understanding a driveway is where a vehicle moves, a parking space where one is stationary. And I think there's a world of difference when it comes to safety.

MR. RUEDO: If I could.

MR. GAMBRELL: Sure, go head.

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MR. RUEDO: If I could just add to Alan's statement here, 2115 specifically excludes driveways for parking spaces.

MR. GAMBRELL: Should I continue, I'm almost finished by the way.

CHAIRPERSON JORDAN: It's your case.

MR. GAMBRELL: Okay. And I rushed through this a little bit but in the above four errors, we identified at least sixteen specific violations of zoning regulations. It was almost like we were, I got to tell you, I almost felt like we were playing whack-a-mole over the past year when it comes to the regulations. And these violations, they're not trivial, they have a significant impact on the scale of this building project. But these violations they do speak to the cascade effect I spoke of earlier where each violation impacts the next creating a proverbial domino effect.

I do believe that we documented each error in our IZIS pre-hearing statement providing references to zoning regulations, precedent from past BZA cases so that we wouldn't waste your time, established DCRA policies like the perimeter wall and great plain methods. By the way, we take no issue with use of one method or the other one, however, we are heartened that the zoning administrator endorses the great plain method for row houses as does the DCRR, and we also relied upon the information that was available to us in submitted

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permit applications.

In closing, as things stand today, the FAR is 2.4, that's undeniable, well over the 1.8 FAR cap for R-5-B. The integrity of the zoning regulatory process is really at risk, that's why we ask the Board of Zoning Adjustment to enforce compliance with regulations so that the same rules apply to everyone. Thanks.

CHAIRPERSON JORDAN: Very good, thank you. DCRA or whoever? Does the Board have any questions. DCRA or owner, DCRA, owner, DCRA, just speak up, come on, just one of you.

MR. TONDRO: Thank you, Mr. Chair, members of the Board. Just a few issues just in referring to the detail that Mr. Gambrell is showing in terms of reading. I think if you turn to Exhibit D of my pre-hearing statement, you'll see Sheet A 202 is the overall approved plan from which that detail is drawn and it may be a little easier to read if you're so inclined. Yes, I'm sorry, it's --

CHAIRPERSON JORDAN: DCRA's --

MR. TONDRO: Exhibit D, my Exhibit D, sheet A 202. You see the lower right-hand corner, it may be a little bit easier to read, that's all. From DCRA's point of view, this issue, the zoning administrator has acted correctly in interpreting the grade. The retaining wall meets the requirements that are in the zoning regulations and the

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definition requires that the for the lower level to be classified as a cellar, that the finished ceiling has to be no more than four feet above the adjacent finished grade.

CHAIRPERSON JORDAN: Are you dealing with the retaining wall, the retaining wall, the parking space configuration and rear grade?

MR. TONDRO: Yes, I'm sorry, what --

CHAIRPERSON JORDAN: Unless you want to open the door to the other stuff, we'd be glad to look at it.

MR. TONDRO: All I wanted to state for the record was simply that the retaining wall as approved by the zoning administrator mean is three feet eleven inches below the finished height of the lower level.

CHAIRPERSON JORDAN: Three feet --

MR. TONDRO: Eleven inches as can be seen from sheet

--

CHAIRPERSON JORDAN: Okay. Above the finished grade?

MR. TONDRO: Right. Yes.

CHAIRPERSON JORDAN: Finished grade?

MR. TONDRO: Yes, adjacent finished grade per the definition of cellar and basement.

CHAIRPERSON JORDAN: And how was that measured?

MR. TONDRO: How is that measured, it's measured from

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the --

CHAIRPERSON JORDAN: No, how was it physically measured?

MR. TONDRO: Since it has not been built yet, all we have is the plans --

CHAIRPERSON JORDAN: Oh, right.

MR. TONDRO: When you look at the scale on the plans or the plans themselves you can look at sheet A 201, A 202, A 203, they all have --

CHAIRPERSON JORDAN: I thought there was some build out because I thought, I guess that was the owner, I thought the owner said there had been built out but let me go back on that.

MR. TONDRO: For the portion that we are dealing with here, which is just that retaining wall and that rear grade, that has not happened, nothing has happened yet.

CHAIRPERSON JORDAN: Let me turn back to the appellant then, how do you measure, did you say it's four feet two inches in the rear?

MR. RUEDO: No, the grade at the front of the building, by their own existing grade, it was 4'2".

CHAIRPERSON JORDAN: Okay. The rear where the retaining is, what do we claim is finished grade?

MR. RUEDO: It would be at the finished measure, at

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the finished grade at the middle of the structure.

CHAIRPERSON JORDAN: So what's your measurements?

MR. RUEDO: Well, my measurement doesn't include the berm because the berm from my perspective creates an additional non-conformity. If you measure it from the berm, it would be one foot, what is it, it's 3'11" plus 1'10".

CHAIRPERSON JORDAN: 3'11".

MR. RUEDO: Yes, 5'9".

CHAIRPERSON JORDAN: Plus 1'10", okay. One foot plus ten because the berm is what, 1'10"?

MR. RUEDO: That's what they're stating. They're trying to make a distinction about adjacent finished grade inside of an area way at the rear.

CHAIRPERSON JORDAN: Okay. You're saying five foot two total or five foot one total?

MR. RUEDO: 5'9" would be the calculation at the mean finished grade at the middle of the structure.

CHAIRPERSON JORDAN: Okay. All right, thank you. Now, what do we do with the berm? Is the berm included in your three and if not, why?

MR. TONDRO: Yes, the permit is measured from the top of the berm, that is the adjacent finished grade.

CHAIRPERSON JORDAN: So you're including the finished grade as the berm, the top of it?

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MR. TONDRO: Yes, it's a finished grade because it's adjacent finished grade so if you look at the rear wall of the lower level by that there, the adjacent finished grade is therefore the top of the berm. And just to get back to the --

CHAIRPERSON JORDAN: What's the purpose of the berm?

MR. TONDRO: The purpose of the berm is as a retaining wall, it is the lateral displacement of soil that's held behind.

CHAIRPERSON JORDAN: So it has a legitimate purpose for being there?

MR. TONDRO: Yes.

CHAIRPERSON JORDAN: Okay.

MR. RUEDO: Can I add to that?

CHAIRPERSON JORDAN: No. So that's what you're claiming. You're claiming that 1'10" inches of berm is, that's the start of the, that's the adjacent adjusted finished grade, the adjacent finished grade?

MR. TONDRO: Right, the top of the berm is the adjacent finished grade because that --

CHAIRPERSON JORDAN: That's 1'10"?

MR. TONDRO: No, the 3'11", it's --

CHAIRPERSON JORDAN: That's the retaining wall?

MR. TONDRO: Right. The retaining wall, let me back

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up, I'm sorry, pardon me. The retaining wall is the one foot ten inches because that is from the end of the driveway/parking space to the top of the berm. The berm itself is the adjacent finished grade. Again, adjacent to what, adjacent to the rear wall of the structure.

CHAIRPERSON JORDAN: And that height is?

MR. TONDRO: Three feet eleven inches to the ceiling, which is the key in the definition of basement or cellar.

CHAIRPERSON JORDAN: Got it. Okay. And we're saying the berm is necessary and retaining wall because it actually does what a retaining wall and berm need to be doing?

MR. TONDRO: Right. Which is the lateral --

CHAIRPERSON JORDAN: A legitimate purpose?

MR. TONDRO: Yes, it's a lateral displacement of soil which is what the definition of retaining wall is.

CHAIRPERSON JORDAN: I just want to make sure, because I know the appellant didn't raise it but that's our general issue that we've had in other cases, simply that, you know, people are trying to build sometimes the Taj Mahal and calling the adjacent finished grade ten feet in the air, so that's why I wanted to make sure it was a legitimate purpose. I wanted to hear it from you. Okay. Continue please.

MR. TONDRO: Yes, sir. So then, the final point is just simply an issue of parking. And I just point out that

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the twelve percent grade in terms of the driveway, if it's a parking space that's also used as a driveway, driveway accesses this parking space, and in this particular case we have a parking space which that is also a driveway, I think that is extremely common throughout the District. If we're going to start to say that parking spaces and driveways are completely separate, I think we're going to create a huge amount of non-conformities and that just goes against everything that exists currently. But more importantly, I point out that's not defined separately in the zoning regulations which is what we're dealing with right here. So, under the zoning regulations, there's nothing that says that the twelve percent grade that is the maximum that's permitted under the zoning regulations which is what the Board has jurisdiction over.

CHAIRPERSON JORDAN: What's the grade at that point?

MR. TONDRO: It is twelve percent.

CHAIRPERSON JORDAN: Okay. All right. Anything else?

MR. TONDRO: No, I don't think so.

CHAIRPERSON JORDAN: Okay. Mr. Sullivan.

MR. SULLIVAN: Thank you, Mr. Chairman and members of the Board. I don't have much to add to that, just to point out that the zoning administrator's decision in the case regarding the rear grade I think was a reasoned decision with

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a basis in fact, custom and practice. He required that the depth of the retaining wall finished grade matched the height of the retaining wall and then also required a certain distance above that matching the height of the retaining wall to be cut out from the building. So I believe it's on the appellant, the burden is on the appellant to point out why that is incorrect, and I don't believe that they've met that burden. Thank you.

CHAIRPERSON JORDAN: Okay. Let me, regarding your laches argument and estoppel argument, would you agree that that is not applicable regarding how we've limited this hearing?

MR. SULLIVAN: I would. Yes. Thank you.

CHAIRPERSON JORDAN: All right. Let me then to give, although the rules don't require it, let me allow you to do some rebuttal. Let me take a five-minute rebuttal please.

MR. RUEDO: I guess I'm not clear on Mr. Tondro's statement that the zoning code doesn't address a parking space as an accessible nine by nineteen area. And how it doesn't exclude a driveway which is defined as twelve percent, not an access point to your space, it defines a driveway as maximum of twelve percent which is where they're getting their maximum grade here. So if it was designed --

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CHAIRPERSON JORDAN: Are you saying that there is a provision in the zoning regulation saying that you cannot consider the driveway as a parking space?

MR. RUEDO: That is my understanding of 2115 and I think it's .1.

CHAIRPERSON JORDAN: Okay.

MR. SULLIVAN: That being the case, the non-conformity of the space is increased by creating a twelve percent grade. Accessible standards in a parking garage only allow up to five percent. The ANSI guidelines --

CHAIRPERSON JORDAN: What did you say the five percent was from? Did you say five percent grade?

MR. SULLIVAN: It's allowed in a parking garage for accessible spaces and it goes up --

CHAIRPERSON JORDAN: In a parking garage?

MR. SULLIVAN: In a parking garage. But the referenced standards under the Barrier Act which is referenced in the definition of a parking space in the zoning code, references the federal standards which are described perfectly in ANSI 117.1 and talk about one in forty-eight as the maximum slope for an accessible space. I understand that that's very shallow, and if this was designed as a five percent originally, as a new condition it would be one thing, but we are talking about adding additional non-conformance to an existing

non-conforming area to park in. And the only reason that they are putting this berm up is because they need to, and this at the risk of tying it into something else, the only way that the upper two levels of this development are allowable under the building code is to have this berm so they can comply with the grade plan. So by accepting the non-conformance of this parking --

CHAIRPERSON JORDAN: Do you contend that the berm does not have a legitimate zoning value use? It's not a meaningful berm?

MR. RUEDO: It should be excluded from the parking space requirement, and the only reason that it's absolutely required by this developer in order to approximate, it doesn't meet the standard for finished grade, what about finished grade.

MR. SULLIVAN: I'm sorry, what about the finished grade?

CHAIRPERSON JORDAN: How does it meet the standards for finished grade?

MR. SULLIVAN: For a parking space?

CHAIRPERSON JORDAN: They're using it as a standard for finished grade, right?

MR. SULLIVAN: That's correct. The berm, only up to the point where it meets the building, which they're trying

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to divorce the building footprint by inserting this retaining wall, right. This retaining wall has been placed, you understand, at the original footprint of the building, okay. They're creating a niche into the building which is no different than any areaway and does not count as a grade measurement, just like you wouldn't count it underneath any other areaway. You have to count it where the actual grade meets the structure at the rear. The only purpose for the earth behind that retaining wall, between this new niche and the retaining wall, it can at best be described as a planter. There is no definition of grade there, you can't stand on it, you can't do anything, it's a crawl space at best that they're creating, it's an areaway in the way that I would say it has been ruled on many times on previous projects. So you would never measure at the top of wall. You would measure where the grade meets the building which is only 1'10" above the basement level or 1'10" below the top of the retaining wall they have.

CHAIRPERSON JORDAN: Yes.

MR. GAMBRELL: And just to add on to that, I heard Mr. Tondro speak and identify the adjacent finished grade, I think he said, and maybe I'm wrong, that the adjacent finished grade in the rear is the berm. And if so then the grade to the lower level ceiling is I believe well over, it's well over 4 feet, it's 3'11" plus 1'10". But I believe what CDRA and

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the applicant are contending is that the adjacent finished grade is actually within the building which is an unprecedented interpretation of adjacent finished grade.

Just a final point on that, DCRA's pre-hearing statement contends that we inserted as appellants the word existing in front of adjacent finished grade, actually we did not do that. The process of applying for a permit does that. If you look at any zoning data summary sheet there are two columns, one is labeled existing and one proposed. That's where the word existing is inserted thus the term existing adjacent finished grade has meaning in the zoning regulations as they're applied by DCRA. So this is not something we wished to be in the zoning regulations, it is in fact is in the zoning regulations.

CHAIRPERSON JORDAN: Why don't you take two minutes for your closing, please.

MR. GAMBRELL: Cy, would you like to reinforce the point about --

MR. BEHRROOZI: Sure.

MR. GAMBRELL: I think it's pretty fundamental. It's probably a bit of what I just said, I think it's worth hearing.

CHAIRPERSON JORDAN: Well, you don't have to do a closing.

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MR. GAMBRELL: No, I think it's good to hear.

MR. BEHRROOZI: Thank you and I'd like to thank the board again for hearing us. Again, my name is Cyrus Behrroozi, I'm an appellant. So when we share all of these dimensions we repeatedly used the word existing. Mr. Tondro mentioned that actually, in fact, it hasn't been built yet is what he said, I believe. Existing, the word is very important; existing is the essential and really the only basis from which zoning official can properly assess any permit application, which is, by definition, a request to change things from how they are now to something else in the future. So obviously, this is essential in implementing zoning regulations. When you look at each of the DCRA forms an applicant must fill out when submitting. Applying for a permit, the forms, again, have two columns existing and proposed.

All of the DCRA forms submitted for the 1636 Argonne misstate existing conditions and therefore misrepresent the FAR. Consistency, it's also clear from communications with DCRA that the concept of conditions as they exist, the finished grade as it exists is the understood point of reference. Unfortunately the word existing is not defined in the zoning regulations, maybe because it's an obvious concept, but if we turn to Webster's dictionary which we are instructed to do by DCMR 199.2 it's defined as to have real being or to have being

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in space and time. And that's where FAR couldn't be clearer, existing FAR how many square feet I have now or for that matter existing retaining wall, is there a retaining wall there.

Proposed FAR, how many square feet I want and am allowed to have in the future or proposed retaining wall. Some may see this as a philosophical argument or over the meaning of the words, it really is not. Zoning needs a point of reference of where you are now existing and where you want to be in the future proposed. The meaning of existing matters when you want a change in existing empty lot into a building.

CHAIRPERSON JORDAN: You need to wrap up if you will.

MR. BEHRROOZI: Okay. Without an appreciate of the concept existing zoning officials and the Board of Zoning adjustment, they are simply forced to deliberate over uncertainties over things that can't be measured like desires. In the Argonne case without this understanding you're left with one thing, which is to deliberate over a developer's desire for the lower level to be a cellar in order to exclude that square footage from FAR so that more square footage can be added to the row house and that goes to the point about whether there's a legitimate purpose for the retraining wall which we contend there is no legitimate purpose for it. Thank you.

CHAIRPERSON JORDAN: Does DCRA or the owner want to use two minutes closing or you think it's necessary?

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MR. SULLIVAN: I just have a quick minute. I would point out they're I think they're confused about the language of existing and proposed. There's existing plans and proposed plans and then there's existing grade, finished grade, natural grade and that's a different concept although. So there's an existing finished grade and a proposed finished grade. And finished grade is finished grade and they're separately used in the zoning regulations for different situations and the zoning commission has changed them when they found that a finished grade is being used.

CHAIRPERSON JORDAN: We had a lot of that.

MR. SULLIVAN: Right. The only other thing I have to say is I've never heard of the barrier act, I can't find it in a search of Title XI so I don't believe that it's in the zoning regulations.

CHAIRPERSON JORDAN: All right, thanks. Mr. Tondo.

MR. TONDRO: Yes, thank you. I'd like to say, first of all when I say clarification, when I refer to the 3'11" that was from the top of the berm, top of the berm up to the ceiling, okay.

CHAIRPERSON JORDAN: Okay. Up to the ceiling, right.

MR. TONDRO: Therefore under 4 feet. Second of all, just to follow up on Mr. Sullivan's point, I would just point

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out that the definition of cellar refers to an adjacent finished grade, there's nothing about existing in there. What the appellants are talking about is a zoning data summary that is used for a variety of metrics that come in, what is the current existing conditions for the height and so forth and so on. You fill those out, you compared it. What matters here in terms of evaluating whether or not it's compliant with the zoning regulations is what is proposed, that is the key, at least as far as regards to this issue, thank you.

CHAIRPERSON JORDAN: Except after the fact that there's built in than we have another issue then we go back on enforcement but I understand.

MR. TONDRO: Yes, thank you, sir.

CHAIRPERSON JORDAN: Good. So let's do this, because we need to have I believe, before the board could probably deliberate and board, let me know right or wrong, I think we need finding of facts and conclusions from all the parties. Finding of facts and conclusions of law on those issues that are before the board in that being what we talked about remaining for the board to address the retaining wall at it relates to the berm and the parking space and the grade measurement, okay. Mr. Moy, can we have a date for that?

MR. MOY: Yes, sir. About two weeks for the transcripts to be prepared, I would suggest, Mr. Chairman, of

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a decision in the month of September, the first week in September.

CHAIRPERSON JORDAN: All right. The first week in September, please.

MR. MOY: Which would be September the 15th and perhaps filings of the findings of fact and conclusions of law, let's say the Monday prior which would put us at --

CHAIRPERSON JORDAN: Okay.

MR. MOY: It would be Tuesday, it's the 7th is a holiday so it would be September 8th for filings to be submitted which is Tuesday, September 8th, decision on Tuesday, September the 15th.

CHAIRPERSON JORDAN: Okay. So that again for the record so we're making sure no one's going to miss it.

MR. MOY: Decision, board decision on Tuesday, September 15th, filings to be submitted the week prior which would be Tuesday, September the 8th.

CHAIRPERSON JORDAN: Okay. Thank you all very much, we appreciate it. Thank you. Thank you again. Wasn't that fun. All right. Somebody else, what are we doing? 37, I guess? Oh, this one is easier. Thank you again, appreciate it. Thirty-seven. Thirty-seven. Mr. Moy, 37 please.

MR. MOY: All right. To the table, applicants to BZA application number 19037, this is the application of Derek

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Mattioli.

MR. MATTIOLI: Hi, my name is Derek Mattioli.

CHAIRPERSON JORDAN: Just a second, please. Okay. Just let me catch up with you. Let me have your name, please?

MR. MATTIOLI: My name is Derek Mattioli, I'm the owner of the property in question along with my wife, Jennifer, here.

CHAIRPERSON JORDAN: And we have a party status request, Donald, yes, please come to the table. Is your mic on? No, it's not.

MR. O'DONNELL: Yes.

CHAIRPERSON JORDAN: Go ahead, introduce yourself, please.

MR. O'DONNELL: I'm Mark O'Donnell, I live at 1359 Massachusetts Avenue Southeast along with my wife, Susan Oehler.

CHAIRPERSON JORDAN: The board grants you party status as we did in the previous case. Okay. Let me ask you, how has the condition of this property changed from where the board ruled that the condition of this property was not exceptional? We had no exceptional situation or condition with this property and we had the previous case for you.

MR. MATTIOLI: Well, the previous construction has been entirely removed and at current state there is a

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difference in grade at the property level where there is --

CHAIRPERSON JORDAN: They changed from the last time?

MR. MATTIOLI: Yes, significantly because the property overhead has been removed so there's a grade that's above ground that is just a concrete block. Then there is at grade and then the area below grade, the steps is unchanged and the area of grade which is at ground level has not changed.

CHAIRPERSON JORDAN: Right. That has not changed.

MR. MATTIOLI: Right, correct.

CHAIRPERSON JORDAN: Okay. So you're saying the enclosed porch is gone, right?

MR. MATTIOLI: That's correct.

CHAIRPERSON JORDAN: So what else changed on this property that makes it exceptional?

MR. MATTIOLI: As the OP report requires, they have gone and revised their definition and have looked the property without the structure there and have suggested that there is a significant issue with the property in terms of size, grade and the fact that our immediate neighbors have built onto our properties which we are perfectly okay with. But there is a fence from our previous neighbor, which did exist previously but was not cited. Additionally, our neighbor to the west has a property that where an open deck directly abuts our property

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line, that was all taken into consideration in the OP's report and we believe that given that the previous structure has been removed, that those conditions and the conditions of the lot should be reevaluated.

MS. MATTIOLI: I guess additionally I would say, I mean I was not a part of the construction, the prior construction, I was not married, is it on?

MR. MATTIOLI: Off or?

MS. MATTIOLI: Is it on now. Okay. So I filed this application as the agent, now wife of Mr. Mattioli. I know the structure that was there previously and I understand why that was not an appropriate structure. I personally sort began the process of just starting with historical preservation and finding out what should be back there, what --

CHAIRPERSON JORDAN: I understand all that.

MS. MATTIOLI: Yes, yes.

CHAIRPERSON JORDAN: I'm asking, can you point out to me --

MR. MATTIOLI: If I could speak to the OP report where previously they determined that there was nothing exceptional regarding the condition of the rear lot. In their current evaluation, they state that the property does exhibit exceptional condition with regards to size and location which

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poses --

CHAIRPERSON JORDAN: Size and location didn't change.

MR. MATTIOLI: Again, they've reevaluated in the case and said that there are previously --

CHAIRPERSON JORDAN: No, no, no, no. Has the size of the building changed? Has the location of the building changed?

MR. MATTIOLI: The location of the building has certainly not changed, no. The size has changed in that the previous existing structure was removed, other than that there has no further change.

CHAIRPERSON JORDAN: Okay. I'm just trying to get there so that we have a reasonable basis to get past what we did before, that's why I'm asking you.

MR. MATTIOLI: Certainly.

CHAIRPERSON JORDAN: What is it a two story deck? Why do you need a two story deck?

MR. MATTIOLI: It's not a requirement but in the meeting with the historic preservation, we discussed with them what our options would be should we be allowed to continued.

MS. MATTIOLI: I met primarily with Frances McMillan personally.

CHAIRPERSON JORDAN: And they told you to put a two

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story deck?

MS. MATTIOLI: She actually said that a two level sleeping deck in either non-pressure treated wood but basically that a two level sleeping deck would be conforming and historically appropriate in our neighborhood. It didn't certainly have to be two, I was really pretty open. I mean, I don't know what goes on the back of a 1908 house and I was pretty open to whatever their suggestions were. I mean, I included 55 pictures, I went around the back of the neighborhood, just our square alone just to see what's back there. There are lots of two level sleeping decks both wood and rod iron and I guess that's what the recommendation was.

MR. MATTIOLI: I know that generally they don't reproduce color photographs, we have those pictures in our pamphlets here if you'd like them.

MS. MATTIOLI: I brought the packets for everybody because we've done that at every meeting so I didn't know if you wanted this or not.

MR. MATTIOLI: So we have examples of how many properties?

MS. MATTIOLI: Well, I took pictures of 55 properties on our square that have obviously gone beyond sort of their lot occupancies. Some are one level decks, many are two level decks, many are enclosed porches, additions, it kind of varies.

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CHAIRPERSON JORDAN: Yes, but that's not our standard what everybody else does. And whether or not it's illegal is another issue.

MS. MATTIOLI: Yes.

MR. MATTIOLI: Sure.

CHAIRPERSON JORDAN: Board, can we see those pictures please, because this is a tight backyard. It's a real tight backyard.

MS. MATTIOLI: Just four?

CHAIRPERSON JORDAN: Four and make sure that the parties, Mr. O'Donnell I believe needs to have a copy of it. Do you have a copy of these pictures?

MR. O'DONNELL: No, I don't.

CHAIRPERSON JORDAN: You have to give them all to him. No, you've got to give them all to them because we might disease you so they have to all go to the secretary for some reason. Whenever this rule started.

MS. MATTIOLI: Did you give --

MR. MATTIOLI: Do you have the four copies you need?

CHAIRPERSON JORDAN: Whoever started that rule said

--

MS. MATTIOLI: He needs one as well.

CHAIRPERSON JORDAN: I feel like a federal judge, you can't give him anything, you've got to go through the clerk

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and if you go look at him it's like, oh, no, no, no. Did you give, yes, absolutely, please. Whatever you give us they need to have.

MR. MATTIOLI: Okay. There you are. And most everything in that packet is included in the IZIS file, it's just that they stated that they would not allow color photos to be reproduced for the --

CHAIRPERSON JORDAN: Oh, I thought you were just giving us the photo, we didn't need the whole file.

MR. MATTIOLI: And the photos are paper clipped, I think they should be tabbed SS homes on square.

MS. MATTIOLI: Fifty-five. They're tabbed the second from the last tab, it says 55 homes on square, 1057 with one to two story or one to two level decks. And I didn't have room to write decks or enclosures.

CHAIRPERSON JORDAN: That's what this is, okay.

MR. MATTIOLI: As in our case, a number of those constructions are visible from the street. There are many that are in the alley that are at the west side of Massachusetts Avenue that are two story, either full enclosed additions or are two story open decks that are all visible from the street.

VICE CHAIR COHEN: Can I ask a question?

CHAIRPERSON JORDAN: Sure, please. Please.

VICE CHAIR COHEN: How is trash get collected, I'm

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just curious?

MR. MATTIOLI: The trash collection in our area is a little different from the rest of the block, in that the houses that are in that area all take, you can see there's a pathway shot here. In the packet there, that's a view from the street at Independence Avenue. There are; one, two, three, four, five houses that store their trash in the rear, in that area and all of them use a walkway --

CHAIRPERSON JORDAN: The walkway that's shown.

MR. MATTIOLI: Correct.

MS. MATTIOLI: Yes, I think there are six of us, but yes.

MR. MATTIOLI: Well no, only five with direct access, right. One takes theirs out the alley directly because they abut the alley.

MS. MATTIOLI: Yes, that's true.

MR. MATTIOLI: And they have a privacy fence that opens to the alley, not to the interior area.

CHAIRPERSON JORDAN: How would you deck effect this walkway?

MR. MATTIOLI: It would have really negligible impact given that all the properties to the west of us have open decks that are built to 100 percent lot occupancy.

CHAIRPERSON JORDAN: These buildings that are in

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this picture?

MR. MATTIOLI: Let's see, they are in --

MS. MATTIOLI: They are. I've taken a picture from our property looking up and so you can see the two other decks next to what we're proposing.

MR. MATTIOLI: Those here in this handout which is the perspective shots that were required around construction area.

MS. MATTIOLI: So all the other properties essentially have either privacy fencing or a deck built to that same.

CHAIRPERSON JORDAN: Do you have a basement door?

MR. MATTIOLI: I do have a basement door, yes. And it would be underneath the concrete block area there.

CHAIRPERSON JORDAN: Okay. So you do have a basement door.

MS. MATTIOLI: Yes.

MR. MATTIOLI: A basement door but not a door from the main level to the rear of the house.

CHAIRPERSON JORDAN: Well, that's the same door that's been there?

MR. MATTIOLI: The basement door, correct.

MS. MATTIOLI: Yes.

CHAIRPERSON JORDAN: I was trying to find something

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that was different than before. Because I know OP says there's no rear door but there is a rear basement door.

VICE CHAIR COHEN: And most of these houses were built in 1908 like yours?

MR. MATTIOLI: 1908, correct.

VICE CHAIR COHEN: Okay.

CHAIRPERSON JORDAN: Board, any further questions? I don't know what else I need ask the applicant. I mean, I'm still kind of on the fence with this. Board, any other questions you may have to ask? So you have the opportunity to come back in rebuttal. Let's see if there's any questions that the party opponent has that you want to ask. Any questions of the --

MR. O'DONNELL: No questions.

CHAIRPERSON JORDAN: Okay. Then let's go to the Office of Planning, please.

MS. RAPPOLT: Megan Rappolt for the record and we continue to not oppose the applicant's request.

CHAIRPERSON JORDAN: In a sense of degree we support, we don't oppose, we request a denial, how does that get ranked? I mean, what does that mean?

MS. RAPPOLT: I think instead of saying approval outright, I think we wanted to bring up the case that happened before and say that there are different things that happened

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in this particular circumstance than before.

CHAIRPERSON JORDAN: How did the property change from the last time, with taking around the illegal structure that was there, how has the physical property changed?

MS. RAPPOLT: I would say that the lot itself has not changed. It's the same size. We went back and looked at it a little bit more carefully. We compared it to the other lots on the square a little bit more carefully, we went to the site several times to see how people actually use that back area, it doesn't appear that people use it except for trash or to be on their decks. It doesn't seem like there's a lot of space to do much else there and it doesn't seem that the applicant's improvement of the 6 foot jut out of a deck would actually impair what's going on there right now.

CHAIRPERSON JORDAN: But the last time this case, you guys didn't make an argument about impairing, the argument was that it did not have an exceptional condition and circumstances. In fact, we cited in the finding of facts to various statements by OP, that it's irregularly shaped although not much different than the others. It's a nonconforming lot area that I can perceive, the rear yard. Measurements of the square.

MS. RAPPOLT: I think we took our analysis a little bit further this time.

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CHAIRPERSON JORDAN: But not necessarily smaller than other properties. So we didn't do them justice the first time or we're doing them justice the second?

MS. RAPPOLT: We went back and looked at it a little bit more carefully and we took the analysis a little bit further this time, so. Instead of saying that there's other lots that are small, smaller than the 1800 square foot requirement, it's true that the average lot size is 1500 square feet but we took it a step further this time. It's actually much smaller than 1500 square feet.

CHAIRPERSON JORDAN: But it's not smaller than the other?

MS. RAPPOLT: It's exceptionally small. It's not unique though, five others on the block that are also small, it's exceptional for the square.

CHAIRPERSON JORDAN: I'm not going to go any further. I'm just going to make sure we have a legitimate basis in the record because people just will come back at every other moment, and even though nothing changes, well let's keep shooting at it, keep shooting at it. I'm just trying to look for some help, that's all. Anything else you want to say about your report or anything?

MS. RAPPOLT: No, a simple continue to not oppose it, so.

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CHAIRPERSON JORDAN: I was going to say, does the applicant have any questions you would like to ask of OP? You can ask questions of the Office of Planning.

MR. MATTIOLI: In your investigation of the other rear lots in the area, did most of those have rear open decks?

MS. RAPPOLT: I did see quite a few rear open decks in various states of repair.

MR. MATTIOLI: And were any of those directly adjacent to our property?

MS. RAPPOLT: Yes. Yes.

MR. MATTIOLI: Okay, thank you.

CHAIRPERSON JORDAN: Any other questions that you would like to ask? Does the party opponent have any questions you'd like to ask of Office of Planning?

MR. MATTIOLI: Just a moment. Office of Planning, in their prior memo noted that they thought the enclosed porch caused a substantial detriment to the public good, what changed?

CHAIRPERSON JORDAN: No, no, no. The porch is gone.

MR. MATTIOLI: Yes.

CHAIRPERSON JORDAN: So you asking the question why do you believe that this deck, as proposed, does not create a detriment to the public good, that's your question?

MR. MATTIOLI: Correct, thank you.

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CHAIRPERSON JORDAN: That's kind of what he --

MS. RAPPOLT: I think when we were evaluating the public good we take a look at what's going on around the area and I think we studied careful the different homes that are directly adjacent to this property and I think all those properties submitted letters of support for this request and the addition of this particular deck didn't seem that it would impair the use of the area, the public good. Those folks that are living there, they're environment.

MS. OEHLER: I don't think there's any other two story --

COURT REPORTER: I'm sorry, ma'am, is your microphone on?

CHAIRPERSON JORDAN: Your microphone must be --

MS. OEHLER: Yes, I don't think there's another two story deck at that end.

CHAIRPERSON JORDAN: It that a question?

MS. OEHLER: Yes, I mean do you --

MS. MATTIOLI: I do have some --

CHAIRPERSON JORDAN: Is there another two story deck at that --

MS. RAPPOLT: Yes, I have not seen two story decks at that particular end. There are two story decks in your square.

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MS. OEHLER: So that would be going way beyond what they had illegally built before and was then deemed not appropriate by zoning measures to then build at two story deck.

CHAIRPERSON JORDAN: Is that a question?

MS. OEHLER: Yes. Well, I'm just wondering why if what was there before was considered illegal --

CHAIRPERSON JORDAN: She's already answered the question.

MS. OEHLER: Yes.

CHAIRPERSON JORDAN: She's saying she does not find it to be a substantial affect on the community.

MS. OEHLER: Yes. I mean, myself being a neighbor on the block, I don't see --

CHAIRPERSON JORDAN: It's not a conversation.

MS. OEHLER: Oh, okay. I don't see --

CHAIRPERSON JORDAN: So your question you asked, she answered the best she could.

MS. OEHLER: Yes, okay.

CHAIRPERSON JORDAN: Yes, she said she doesn't think the two story deck will present a substantial impact on the area.

MS. OEHLER: Okay. All right.

CHAIRPERSON JORDAN: Okay. Any other question?

MS. OEHLER: No.

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CHAIRPERSON JORDAN: Okay. All right, now. Where are we? Anyone here from the Department of Transportation in this case? We have a letter of no objection. We have a letter from ANC 6B voted 9 to 0 in support. Did we have some letters in support from your neighbors?

MS. MATTIOLI: I have 29 letters of support plus a petition.

CHAIRPERSON JORDAN: Yes, that's what it was the petition, so.

MS. MATTIOLI: Yes.

CHAIRPERSON JORDAN: All right.

MS. MATTIOLI: Those were all of them, yes.

CHAIRPERSON JORDAN: Anyone here wish to speak in support? Anyone wishing to speak in support? Turning now to opposition.

MR. O'DONNELL: Yes, I'd like to point out Plaintiff's Exhibit A if you have access to it. It was in the record, it's a Google Earth picture of the block.

CHAIRPERSON JORDAN: Okay.

MR. O'DONNELL: Do you have that available? And on it the letter A indicates the property at 1375 Massachusetts Avenue. At the back, you can see the rectangle. That's the little illegal addition and you can see towers and blocks off both sides. The open space on east and west of that is blocked

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off. The new structure would be two stories high. It obliterates rear yard and court requirements. It is a 100 percent lot occupancy request. In the historic district, you know, and a block that's on L-Enfant's original plan visible from the street. It chokes off that whole end of the block. If you look down the block the block gets wider and you have big back yards and some garages. Well, lots of these photos they're showing you are from places down the block which are wider, many of them satisfy the 60 percent lot occupancy requirement already. Sure, they have sleeping porches and other things in their back but of these seven properties at the end, at the point around A, the two at the apex and the seven that are access through this 3 foot wide alley there are no two story structures. They don't appear ever to have been any two story structures or sleeping porches at that end. These are as noted in the Office of Planning memo from the illegal construction, these were both this way. People lived there for 100 years, there's absolutely no exceptional or undue hardship, there's no extraordinary or exceptional situations.

The owners haven't even claimed that. There's just none here. The place is a three bedroom place for a couple, there's room there. The other porches they're talking about are flat decks that come off the first floor and it appears that some people have extended their porches to the, you know,

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alley in two cases but others have not. There's open space, you can see on either side and I think what they've done is with their photos, they've sort of muddled the case. They've given you all these pictures of dissimilar and non comparable type houses down the block and not focused on the small properties there. And the same with their chart, they've sort of selected out certain properties to show you that hey, lot occupancy base, as their footnote says, partially visual inspection. Precise numbers for visual inspection. Four of those on Independence Avenue, I've watched as people built out to the alley without any shown permits or zoning variances, the two they cite directly next to them, 1373 and 1371, don't look like they are original and there's no variance showing for those either.

As I indicated, it seemed like something was on the wrong property. I'm just suggesting that this is selection, the area is already too crowded. It is the purpose of the zoning requirements to preserve open space; it's the look and feel of our neighborhood. We are in the historic district and light and air is important. If this were to approved too I don't see how you could refuse anybody coming in saying that hey, they would like that, that's sort of they desire it, there's not hardship, we've weakened the standard, everyone on that end of the block can claim the same thing and build

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a two story structure on the alley. We'd have a little 3 foot wide slot canyon this wide you walk through.

In addition, there are some questions about the plans that they presented. If you notice the basement door is below grade, there are steps up to grade. Well, this is 100 percent lot occupancy structure, to put those steps in, to bring it up to the required grade and still have the required, what is it 6.8 headroom, those steps are going to have to project out into the 3 foot wide alley way. That raises the question of the plans. The other question about the plans is the rear wall, there's absolutely no egress from the house shown on the plans onto these decks. They didn't describe the rear wall at all. When they took down the rear addition they didn't return the rear wall to the condition it was in before. There was previously a deck and stairs down and a door way from the first floor out onto the small deck, a landing, the concrete landing with the steps. They took out the steps and picked up the rear wall.

They had an egress as mentioned in the documentation about well needing a safety egress. There are no steps in the current one so it's hard to say. In any case, the plans as written don't show any entrance so it's pretty clear to me, as was their history and their illegal construction where they presented one set of plans and built something radically

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different including gas lines and electric lines all illegal. That they plan on building something that's not totally described in the plans which gives me some pause.

But the real concern is the uncontrollable precedent. If this is approved anyone can claim it, it seems like all you've got to do is want it and make a claim your property is unusually small. The Office of Planning, and I'd kind of like to share the document with you if I could, Officer of Planning document says 73 percent of these properties in this square shown on this photo, 73 percent of them have had lot occupancy issues. Everyone of them could make this same claim, they're small and they need this porch and why don't we all build to the alley and we'll have vertical face on the alley. I think the zoning requirements are stern, we know they're strict, they require extraordinary undue hardship or extraordinary exceptional situations in order to prevent just willy nilly changes to our zoning protections which are part of our neighborhood's look and feel.

ANC 6B did approve it, I went to the zoning committee meeting and it did not appear to me that anyone there was discussing the strict standard for a zoning variance. There was no discussion of hardship or extraordinary circumstances, it was hard to say what they were talking about. While I was there, they didn't reject anything and I don't believe they

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rejected the illegal one last time, so I'm not sure what they were talking about but it wasn't the strict standard for zoning in my estimation. I also went to the Capital Hill Restoration Society meeting where this case was presented to them and they opposed it. They did talk about the standard for a zoning variance.

CHAIRPERSON JORDAN: Board questions of the party opponent?

VICE CHAIR COHEN: Yes, I believe the zoning code does have strict standards that we need to apply but there's also the ability to recognize that times change and evolve and so my question to you is there's a reason why people have put up and continue to have nonconforming lots and the reason given is often the tightness of particular lots. Are you suggesting that, you know, these people shouldn't be able to enjoy the sort of outdoors that is available?

MR. O'DONNELL: Not at all, they can enjoy the outdoors and in fact the people directly across the alley have a patio and chairs and a table, plants, they enjoy the outdoors. There's an ample front yard as well.

CHAIRPERSON JORDAN: Now, where is your property in conjunction with this?

MR. O'DONNELL: My property is 1359, so on this photo

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CHAIRPERSON JORDAN: You're in that out unit, the courtyard area?

MR. O'DONNELL: I'm not in the direct alcove, I am down the block right here.

CHAIRPERSON JORDAN: But you're not affected directly. I mean, if the deck's there you're not going to be blocked by it or see it necessarily?

MR. O'DONNELL: To the east, I can see it from my backyard.

CHAIRPERSON JORDAN: You can see it but you're not blocked in. You're not on that little pathway, you said pathway?

MR. O'DONNELL: I'm not in that pathway, no. I'm not in the pathway but I'm also concerned that if this is approved others will make the same claim, right, then I will be and I think everyone along the row will be. If others can use this uncontrolled precedent, they need it and hey, the property is small. The Office of Planning made the point that it's not uncommon on Capitol Hill to have small properties and nonconforming properties and people have lived in them for many years, plenty of outdoor space, parks at the end of the block, large ample front yards, and again it will present a vertical face in the Office of Planning's memo made this point, that a vertical face on the public alleyway.

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CHAIRPERSON JORDAN: All right. Does the board have any other questions of this party opponent? Does the applicant have any questions? Questions?

MR. MATTIOLI: Questions. From what point in your property --

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MR. MATTIOLI: From what point in your property are you able to see the rear of our property and how many feet in would you say from the alley are you able to view our property from your own?

MS. OEHLER: From the second story.

MR. O'DONNELL: From the second story clearly, from my backyard in a few feet and there's a bit of chutzpah in this, in that it's part of the back story here.

CHAIRPERSON JORDAN: We're not going to deal with that one.

MR. O'DONNELL: Okay. They basically built a barrier, so, you know.

MS. OEHLER: Yes.

MR. O'DONNELL: I used to see that way until they built the 100 percent lot occupancy. Disability addition --

MR. MATTIOLI: We haven't built --

MS. OEHLER: I know.

CHAIRPERSON JORDAN: It's gone, I understand.

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MR. O'DONNELL: But the owner and the owner's mother built the illegal one on this property and they built that one, the owner mother. So my point is, I used to see east but they built this addition in the way. In any case, I lived there 34 years, our whole neighborhood, this is my home and our whole neighborhood is important. I think the --

CHAIRPERSON JORDAN: What was the question you asked because I think we're way beyond?

MR. MATTIOLI: I asked how far out from his house would he need to be able to see.

CHAIRPERSON JORDAN: Any other question?

MR. MATTIOLI: No questions but I would like a rebuttal.

CHAIRPERSON JORDAN: Okay. Does the board have any questions of the opponent?

MS. MATTIOLI: I mean, I don't know if I'm allowed to make --

CHAIRPERSON JORDAN: No, we've already had, go ahead, quickly though.

MS. MATTIOLI: Well, I'm just saying we are in the historic district, it should mean something. All around us is brand new construction, they're beautiful 800,000 to million dollar homes and on their back, on their backside it's a squished canyon type situation. I feel like I pay extra,

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I'm in the historic district and it should mean something. There should be zoning guidelines that have been set in place that should be adhered to. And because maybe other people didn't get the correct permits, is that really the root we want to go down that because others have done it, this is now going to be our new way of doing things?

CHAIRPERSON JORDAN: It sounds like your closing so.

MS. MATTIOLI: Oh okay.

CHAIRPERSON JORDAN: We'll take that as your closing. Yes. OP.

VICE CHAIR COHEN: Because this is Capitol Hill Historic District, were you aware that they did not approve this?

MS. RAPPOLT: So because of the history of this particular property the historic preservation staff had recommended that they applicant go before the BZA first but the applicant has been in discussions with two historic preservation staff in my office and I've been aware of those conversations and I've seen them over the past few months.

CHAIRPERSON JORDAN: That's an unusual step. Okay. Capitol Hill Restoration Society submitted a letter of not supporting the requested relief and saying that what is different in this case than the previous case, the same thing we've been raising here. Okay. Anybody else wishing to speak

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in opposition? Anyone else in opposition? All right. Then turning back to the applicant for any rebuttal.

MR. MATTIOLI: Certainly. First I'd like to address Mr. O'Donnell's statement that our property is somehow different from the other properties between our own and his. Next to his property there is a two story backend, again after that there's a two story covered sleeping porch, then a privacy fence, then a one story deck, an additional one story deck and then our property. So to state that our property is somehow not in line with those standards is unreasonable.

MS. MATTIOLI: He also implied that the view blocked was from construction of our own and it's not, it is my mother-in-law --

MR. MATTIOLI: That's not relevant to this situation. Furthermore, as Mr. O'Donnell stated he has no access to that enclave except from walking around the block to Independence Avenue, walking up there he has not purpose to be in that enclave. Furthermore there have been multiple signatories not only from our own square but from those on Independence Avenue who have supported this application with the idea that the current situation in the back of our yard is an eyesore and that a historically accurate rear two level rear deck would bring that property into line with something that is more historically appropriate, something that is more

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attractive for them to view, the ANC agreed with that. The fact that the structure is weather permeable and has not cover on the top level it would be incredibly difficult to see it having any impact on someone who is six or seven houses down from our own, especially given the properties in between them.

CHAIRPERSON JORDAN: Was I mistaken when I thought you said the historic preservation said --

MS. MATTIOLI: I started with historical preservation.

CHAIRPERSON JORDAN: No, I'm asking a question, you can't speak when I'm speaking because you're not going to get the question. Was I mistaken when I thought you said historic preservation said that you should do two decks?

MS. MATTIOLI: They recommended that a two level sleeping deck, when we were talking about all the options --

CHAIRPERSON JORDAN: Recommends but the historic preservation hasn't passed on this yet, is that correct?

MS. MATTIOLI: No. No. I was just entertaining thoughts of what would be appropriate. I was asking for their input.

CHAIRPERSON JORDAN: All right. Then let's close this hearing based upon what's before the board. I don't know if the board is ready to deliberate on this case, anyone need to say something? Somebody? I'm open to whatever the board

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is because I'm just not running up and down the street on this one. Somebody can --

VICE CHAIR COHEN: Mr. Chairman, I think the applicant has done their homework in going around, talking to neighbors, getting their view points, getting the approval of the ANC. I think that the Office of Planning actually did their homework and I compliment --

MS. RAPPOLT: It's Megan.

VICE CHAIR COHEN: Yes, I compliment them for going out and, you know, doing a more in depth analysis of the neighborhood. Each project stands on its own merits so I don't know if everybody is going to go around saying, now that they got approval, we're going to go out and build a deck. It's a possibility but I see no real major obstacle, other than one neighbor taking exception because they want to retain and feel/perceive that Capitol Hill is part of the historic district, but I don't see it as a detriment to the neighbors on both sides or the rest of the people in the neighborhood.

CHAIRPERSON JORDAN: How does it meet the zoning test and how is it different than the last finding that there was not an exceptional situation and condition with this property?

VICE CHAIR COHEN: I have to go back to OP.

CHAIRPERSON JORDAN: Let me ask you a question. Are you willing to live with one deck rather than have another deck?

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MR. MATTIOLI: Absolutely.

VICE CHAIR COHEN: Again, I think OP and my analysis of it. They're talking about a reasonable sized deck which is less permanent than the earlier one that was taken down, which was enclosed. It is the smallest yard. I think, again, to me it's the fact that they are not affecting their neighbors and that the ANC which is a representative body who supported their request. So, based on that outreach, that support I don't see this as being a problem.

CHAIRPERSON JORDAN: Okay Mr. Hinkle?

MEMBER HINKLE: Yes Mr. Chair, I tend to agree with my colleague and Commissioner Cohen. I do appreciate the work that the Office of Planning did. I think they did quite a thorough analysis, in terms of the uniqueness of the property and then came up with a different determination than when we had the previous case at this property. I guess I'll keep it short and say that I am in support of this application at this time.

CHAIRPERSON JORDAN: With both decks?

MEMBER HINKLE: With both decks. I think they still have to go through historic preservation review, maybe the deck and the top comes off after that but I'm okay with both decks. I don't think they would have any negative impact on the public good.

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VICE-CHAIRPERSON HEATH: I was interested in your question to the applicant and you answered affirmatively that you would be accepting of just one deck. Given that you do still have to go before historic preservation, I agree with Mr. Hinkle. I could approve this and let Historic Preservation weigh in on whether or not it should be one or two, if any decks.

CHAIRPERSON JORDAN: Does one of the board members want to make a motion?

VICE-CHAIRPERSON HEATH: I make a motion that we approve this request and for variance.

MEMBER HINKLE: I'll second.

CHAIRPERSON JORDAN: The motion is made in second that the requested relief be approved. Ready for the question?

VICE CHAIR COHEN: Yes.

CHAIRPERSON JORDAN: All those in favor, aye.

(Chorus of ayes.)

CHAIRPERSON JORDAN: Those opposed, nay, those abstained, aye abstaining. So with that, the vote is 3-0-1 with a pass for Mr. Moy. I'll let you do your homework.

MR. MOY: No, I think you got that Mr. Chairman. I make a motion to Vice Chairman Heath to approve the application for the variances requested. Seconding the motion is Mr.

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Hinkle. Also in support is Ms. Cohen and of course Chairman Jordan abstain from the vote, and we have a board seat vacant but the motion carries 3 to 0.

CHAIRPERSON JORDAN: That's a full order?

MR. MOY: Yes sir.

CHAIRPERSON JORDAN: Thank you. And I'm not going to be for the last case. Vice Chair Heath is taking over.

(Whereupon, the above-entitled matter went off the record at 12:31 p.m. and resumed at 12:35 p.m.)

VICE-CHAIRPERSON HEATH: Mr. Moy, do you want to call our last case?

MR. MOY: With pleasure. That would be Application number 19029. This is the application of Eric Piersma. This was advertised, Madam Chair, for a variance relief to 401.11 for light area for apartment conversion to renovate a flat to a full unit apartment house at 1338 Fairmont Street, NW. This was originally postponed from June 30, 2015 and I believe there is also a filing on the record on Madam Chair for additional information and there are exhibits 32 and 33.

VICE-CHAIRPERSON HEATH: Okay. I assume you all turned in your cards to the court reporter. Okay. Could you introduce yourselves?

MR. MCDONALD: I'm Matt McDonald, the architect for the project.

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MR. PIERSMA: Eric Piersma, homeowner.

MR. DIXON: Clifford Dixon, agent.

VICE-CHAIRPERSON HEATH: Okay, agent?

MR. DIXON: For the homeowner, for the client.

VICE-CHAIRPERSON HEATH: Got it. Okay and we do have a letter of authorization for you. Unless any of the members of the board have specific questions, what we're going to need you to do is to show that you meet the burden of proof for the variance request. You're aware that Office of Planning has recommended denial of your application, correct?

MR. MCDONALD: Yes.

VICE-CHAIRPERSON HEATH: Okay. So what we're going to need you to do is, as a part of your presentation, prove to us that you meet the requirements for a variance.

MR. MCDONALD: This is my first zoning appeal so originally we thought we were going to file it as a special exception and then for whatever reason, upon further review, it was determined to be a variance so we organized a little bit. For the exceptional conditions, the property currently has a permitted use and occupancy for a two-unit building. Mr. Piersma purchased it in approximately 1989. At that time, it had three apartments and it's still in that configuration now.

When he first contacted me it was to try to obtain the property's occupancy certificate. We learned from DCRA that

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to bring us up to code in its current configuration would require the addition of sprinklers, fire separation and an electrical engineering to do some field reviewing of the current configurations there. That does not come without significant costs and we are looking at the cost burdens as well as the configuration of the units that we thought was provided as unique and exceptional situations given there are existing conditions that aren't conforming. We are trying to work with that.

It was treated like new construction in DCRA's original review and it's not new construction. To bring us up to the current building codes, we're estimating a cost close to \$500,000 and to help offset those costs, dividing up the rental units from three units into four units would help with that.

Additionally, the as-designed and current conditions, there are eight bedrooms. We would actually be reducing the usable bedrooms, making them more efficient units and easier for him to rent. It's difficult to rent a large apartment in that area.

VICE-CHAIRPERSON HEATH: Okay. Any other?

MR. DIXON: I will say in addition to that I've done all the research on this and this is not my first hearing. I was listening to the early hearings. If you rented out rooms, the density would be a lot higher, so you would actually have

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more people if you rented out rooms versus doing the apartments in that area.

VICE-CHAIRPERSON HEATH: Right, but you still have to prove to us that you have a unique condition that's a practical difficulty.

MR. MCDONALD: I think the unique condition is the field conditions are currently non-conforming and to bring that up to current standards are significant construction and cost requirements to and we're trying to help offset some of those costs.

VICE CHAIR COHEN: What exactly do you mean by field conditions?

MR. MCDONALD: The structure, in its current configuration, has three separate apartment units. It has a two bedroom in the basement, a two bedroom on the first floor and then the 22 top stories are a separate four bedroom apartments so there are three apartments currently in the building.

VICE CHAIR COHEN: Are they code compliant?

MR. MCDONALD: No and that's what we are trying to address, initially were trying to make these code compliant. When they were built, I believe they were code compliant. The newer building codes require a little higher ceiling heights for the lower units as well as a sprinkler system if it's more

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than a two-unit building and we are wanting to bring it up to code compliance and thought with the costs, it helps upset some of those costs. A sprinkler system is not a small purchase. It usually involves the actual sprinkler system as well as an increased size in the water service to the unit and those two costs alone for just the equipment is close to \$50,000. That's not accounting for the work within the current units as they are all finished spaces already so the drywall ceilings need to come down. Pipes need to be run, the whole height and size of the building.

VICE-CHAIRPERSON HEATH: Do you currently live in the home?

MR. PIERSMA: I do not. I purchased it in 1989 and I lived in it for ten years. It was an extremely bad area and I had difficulty renting the basement apartment. At the time, I needed the money to make the mortgage so I suffered for ten years and I left finally. I live two blocks away, but I think the biggest difficulty other than the monetary fact is that the top unit right now is 22 stories, almost 2,200 square feet, so for that to be one living unit is impractical. It has four bedrooms and three bathrooms.

VICE-CHAIRPERSON HEATH: The first and second floor?

MR. PIERSMA: The third, fourth and fifth floor.

VICE-CHAIRPERSON HEATH: Okay.

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MR. PIERSMA: The building is almost 5,000 square feet so that's part of the problem. If this building were a two or three story, it would be very easy to comply with the R4 regulations, but the house is so big it makes it impractical to do so.

VICE CHAIR COHEN: I have another question. My computer is kind of doing its own thing. Did you submit for the record the cost of all, I don't recall. I've read so many ---

MR. MCDONALD: We just finished it. Actually, I just met with the general contractor and again, we haven't done a complete line by line bid. Obviously there are some costs and we were trying to get the variance approved before we engaged a contractor fully, but I do have a basic conceptual pricing breakdown I can distribute to you guys now, if you'd like to see that.

VICE CHAIR COHEN: I think that would be helpful to have on the record. I didn't recall seeing any and I think your case rests heavily on the impact of these costs but I'd like to hear from OP.

MR. PIERSMA: Can I say something else?

VICE-CHAIRPERSON HEATH: Sure.

MR. PIERSMA: Also in the handout that I gave to Mr. Moy earlier, I pointed out that even though I am in the R4 zone,

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I am probably 50 feet from the C2B zone, which is medium to high density as a matter of right. I'm probably 75 feet from the R5B zone to my south and I am next door to a 14-unit cooperative building. Next door to that at the corner of 14th and Fairmount is an 80-unit building. I am surrounded by, either they were grandfathered, or they're not conforming but I don't know if they were grandfathered in or how it happened, but I'm surrounded by buildings by buildings that don't conform and meet the land area requirement in the R4 zone. So my house isn't like this white elephant that's just sitting there. It wouldn't be this four-unit apartment building that was out of character with the rest of what's around me.

VICE-CHAIRPERSON HEATH: Okay.

MR. MCDONALD: We also have two parking spaces.

MR. PIERSMA: And I have two parking spaces in the back to offer.

VICE-CHAIRPERSON HEATH: Okay. Alright. At this point we'll turn to Office of Planning.

MS. FOTHERGRILL: For the record, I'm Anne Fothergrill from the Office of Planning and as you saw in the staff report, some of the information came in late and we did a less detailed review than we would normally do. Some of the information has just been provided to us today, but our recommendation does not change that the intent of the R4 zone

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is not for four units in a building and we do not recommend the 33 percent relief.

VICE-CHAIRPERSON HEATH: Okay. Alright. Applicant, do you have any questions of Office of Planning?

MR. PIERSMA: No.

MR. MCDONALD: I just question that the street in itself, if you look at the street, I understand the zoning, but I think looking at this particular street in instanceY

VICE-CHAIRPERSON HEATH: If you're asking, make sure you're asking a question.

MR. MCDONALD: If this is the only unit on that street that does not kind of match up with the current four unit buildings does that create different than the neighborhood's zoning intent? Maybe I should have phrased that properly.

MR. DIXON: It's basically that the system was what's on that street --

MR. MCDONALD: Would you agree that our proposal is consistent with the adjacent structures on the street?

MS. FOTHERGRILL: I would agree that there a lot of building types on your street.

MR. MCDONALD: Okay.

MR. DIXON: And also we have the ANC approval too.

VICE-CHAIRPERSON HEATH: We're aware that you do have the approval of ANC1B. We have a letter of support but

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I think Office of Planning is still recommending denial and my understanding is that the basis is still because you don't feel like they satisfy the --

MS. FOTHERGRILL: We did not find they met the variance test.

VICE-CHAIRPERSON HEATH: I understand that you're resting on financials as being the basis of your difficulty here?

MR. MCDONALD: And existing conditions. I think we would be willing to accept a three unit variance which is the existing conditions, there are still costs associated with bringing that up to code. It seems to require him to tear out an apartment building is an undue, almost unfair financial burden as well.

VICE CHAIR COHEN: Question with regard to the larger unit; you said it's difficult to rent. It's a four bedroom, did you say?

MR. PIERSMA: Yes.

VICE CHAIR COHEN: I don't understand that frankly because we're not building any four bedrooms any more in this city because of the cost so preservation is one of the areas that we tend to believe can help us alleviate and keep families in the neighborhood so can you elaborate a little bit on my comment here.

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MR. PIERSMA: The change in the demographics shows that the people that are moving into the city particularly in Columbia Heights, they are not families. They are singles or couples and they are looking for a one or a two bedroom unit.

MR. MCDONALD: I think you see a lot of the group housing mentality. I think it's a way that people are sort of taking advantage of some of the zoning regulations in that zone. They are basically creating an apartment just not in name and Mr. Piersma is trying to avoid that situation for his property. As I mentioned, the actual density of the building is actually lowering to more align with, perhaps in our fore idea is rather than an eight bedroom unit we're dropping to a seven bedroom unit.

MR. PIERSMA: Can I add something? The house was originally built as an eight bedroom two bathroom house in 1908. It was always intended to house up to a legal limit of 17 people, so really nothing is going to change. The outside of the structure will remain the same. We're not doing any pop up or changing anything and I think I've done a pretty good job with trying to preserve the original building. I haven't changed anything on the exterior. When I bought it and it was already gutted, unfortunately. If the building today, had original detail, I wouldn't be touching it. It was gutted probably in the 50's and turned into apartments sometime in

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the 80's just before I bought it so I think changing the interior, adding another unit is not going to really affect occupancy or the neighborhood.

VICE CHAIR COHEN: Oh, another question since you brought up the burden of having to upgrade these units and meet building codes and I think earlier you said that it's sort of a financial burden to you. What will this do now to your cash flow? What type of returns will you see?

MR. PIERSMA: Well I won't see a return for a long time when I put \$520,000 back into it but I need to bring the building up to code. I'm anxious to do that. I haven't really done an analysis. I'll probably see the return in five to seven years and by that time I'll need it because I'll be retired.

MR. MCDONALD: As a resident of the neighborhood, I think his motives are a little more for the good of the neighborhood, rather than just as a sole developer. He lives a block away from the property so I think he has a vested interest in maintaining the character and feel of the neighborhood in his current configuration.

MEMBER HINKLE: Yes, if I may. So these cases we see every now and then and we certainly understand it. We understand that some of these townhouses are very large and they sit on these lots and we see cases like this often. We

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understand your argument and I think you're getting there, but I'm not sure if we have sufficient information yet. So that analysis that you were talking about, about a return in investment, that's something that we would be interested in, kind of a comparison as to existing rentals in the area and if it is difficult to rent a 2,200 square foot place, that's something I think we need to see in order to move forward on this, at least for me.

My suggestion is to go back and do a little more work and you're hearing our comments and our questions and try to pull that information together a little bit more. Maybe do an analysis in terms of a matter of right project with two units or plus one with three and plus with four and show the return on investment, so that we could actually see if you're going to lose money or what. I think that would really help you in this case but I'll be honest, these are very difficult and Office of Planning consistently recommends denial of these cases but some have been approved and so my recommendation might be to look at some of those previous cases over the past couple of years that the BZA has looked at and approved and maybe you'll get a better idea as to the type of information and the type of argument to supply to us. I think you're getting there. I think you're on the right track but I don't think we quite have the information that we need yet in order

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to really analyze this application to the fullest. That's just my comment.

VICE CHAIR COHEN: I would like to add another comment because of what was stated with regard to the surrounding neighborhood. For OP to take a closer look at the connections between the 5B neighborhoods adjacent across the street. So you have great density, from just looking at the map, in that neighborhood and so I would like to hear more of what OP says on regard to that surround neighborhood because when the ANC is willing to approve something and they're comfortable with it. That's one of the hurdles, obviously. We give them a great weight, and we give you great weight, we're sort of in a Solomon type of position, so I would like a little more bit analysis with regard to that.

VICE-CHAIRPERSON HEATH: I think the applicant would benefit from more time to be able to provide the information that Mr. Hinkle has requested on financials and also to be able to work with Office Planning. I think based on Office of Planning's report and her comments today. She hasn't had enough time with new information coming in to really be able to work effectively with you and to get to a position of approving this. So it sounds like we're all in agreement that you need more time and we would recommend continuing.

MR. MCDONALD: Appreciate that recommendation.

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Like we said, we originally kind of thought it was going to be a special exception and recently there was some confusion with the letters and some of the terminology coming back from the original review so we're back scrambling but --

MR. DIXON: We've actually have three letters.

VICE-CHAIRPERSON HEATH: Right. So, Mr. Moy we'll continue this.

MR. DIXON: I do have a question before we do this. Do you want us to come in with the analysis for three and four or just for the four?

MEMBER HINKLE: I would say that what we would like to see is if you can do it as a matter of right, would you get an investment? If you don't, then if you add another unit, what kind of return on investment is there? If that doesn't provide anything, if it's still negative, do you add another unit? We've seen that sort of analysis before but along with that, it includes kind of a breakdown of what kind of repairs you need to do, what those costs are and then also a comparison as to how you could rent it out and make a profit. Again, if four bedroom units are renting, that doesn't go with your argument but if they're not, then you can't make any money off of that then that's an argument for a smaller unit.

Again, I would recommend taking a look at some of the other BZA similar cases like this that have come through over the

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past couple of years and then you can build your argument off of that. I think you guys are getting there. You're making kind of the right statements but we certainly just need a lot more information.

MR. MCDONALD: Okay.

MR. DIXON: Now the matter of right is the two units?

MEMBER HINKLE: Correct.

MR. DIXON: But physically it is three units right now so there will be a burden, you ripping out one of those units.

MEMBER HINKLE: I think that's a good part of your argument, certainly.

VICE CHAIR COHEN: Let me just mention about the demographic argument because she could argue it both ways. You could say, people are not renting because they can't afford a larger two, three bedroom unit so that's why they leave the city and we bring in people who are not supporting a family. So, the city actually is anxious to retain families because again I don't know how close the nearest school is but they are losing population and consolidating. So I could argue it both ways regarding not having family housing in that neighborhood because the rents have gone up so high so just keep that in mind, is that demographics can be argued many ways.

MR. PIERSMA: Yes and the large unit, it can rent but

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usually in neighborhoods like Columbia Heights, it's a shared situation and then maintenance in the apartment goes by the wayside. I've owned property like that before and I've had to get rid of it because they become unmanageable.

MADAM CHAIR: Okay. All right. Thank you. We're going to try to find a date for the continued hearing and additional information.

MR. MOY: I'm sorry Madam Chair. Did we go through the procedures for testimony?

VICE-CHAIRPERSON HEATH: We haven't gone through everything. We can go through everything since I guess you're here for --

MR. MOY: I'm the ANC commissioner.

VICE-CHAIRPERSON HEATH: Okay, so thank you. Yes, you can forward. We do have a letter of support from the ANC but thank you for coming. It's a long day.

MR. DIXON: Yes, it has been.

MR. RANSLEM: My name is ---

VICE-CHAIRPERSON HEATH: Please make sure your microphone is on.

MR. RANSLEM: My name is Mark Ranslem and I'm the commissioner that that includes the property that Mr. Piersma owns. It's in ANC1B08 and I'm also Vice Chair of the Zoning Preservation and Development Committee as well as a neighbor.

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I live just a few doors down from this property.

I led efforts at the ANC to support this fourth unit. I know for a fact through my own occupation as well as in the ANC, there is a real need for more units, not larger ones. They are not renting. I'm dealing with a pud right now. This is relevant because just two streets away, it's an R5B looking to become an R5C. There are 48 units in two buildings right now and they are looking to build 170 units and that's significant. The number of people that are moving in the neighborhood, they are single people, they are couples, as they said earlier.

Mr. Piersma, the main reason I've been so passionate about this is that he's very modest, but he set the standard in the neighborhood for improving the looks of the buildings and landscaping and each one followed suit over the last couple of years. He's been one of the key people who has revitalized Columbia Heights. Given that there aren't changes to front of the building and very little change to the structure itself and the full support of all neighbors around, I just feel very strongly that the Commission would be well served to support his application. Thank you.

VICE-CHAIRPERSON HEATH: Thank you. Thanks, as we said, for staying and for coming down and speaking.

MR. RANSLEM: Thank you.

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VICE-CHAIRPERSON HEATH: One thing I didn't request was if anyone was here from DDOT, which it appears there isn't. We do have a letter of no objection from DDOT and also a letter of support from ANC1B so anyone else wishing to speak in support? Anyone in support? Anyone wishing to speak in opposition? Anyone in opposition? So then we can close and find a date for continuing.

MR. MOY: As a matter of clarification to me, is this a continued hearing or do you want it as a decision meeting? Whatever at your pleasure.

VICE-CHAIRPERSON HEATH: I would think a continued hearing.

MR. MOY: Perfect. I'm guessing that the applicant's going to need a fair amount of time and Ms. Cohen is going to be back with the board. We have that appeal case on September 15 which is the first hearing after the August recess so staff would suggest continuing this to Tuesday, September 15th and the additional filings to be submitted the week prior which would be September the 8th, I believe.

VICE-CHAIRPERSON HEATH: Does that give you enough time?

MR. PIERSMA: Yes, September 8th.

MR. MOY: Continued hearing on the 15th.

MR. MCDONALD: Just one question for the board, with

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regard to some of the financials, the initial package was something I produced working with some contractors. Would it be in our benefit to have something on more of a professional bid from a general contractor for some of the financials?

VICE-CHAIRPERSON HEATH: Any information you can provide us with regard to financials however you can produce it, that's accurate.

VICE CHAIR COHEN: I think as an architect, you have a fair amount of experience.

MR. MCDONALD: I would agree with that, that's if you're okay with my interpretation of some of those things. As you know, sometimes difficult for them without having the official contract yet.

VICE-CHAIRPERSON HEATH: We're asking for estimates.

MR. MCDONALD: Understood.

VICE-CHAIRPERSON HEATH: Thank you. Any other matters coming before the board today?

MR. MOY: Not from the staff manager.

VICE-CHAIRPERSON HEATH: Then we will adjourn.

(Whereupon, the above-entitled matter went off the record at 1:05 p.m.)

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