

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY,

SEPTEMBER 21, 2010

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER Chairperson
JEFFREY L. HINKLE Board Member
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL Commissioner
FAIA (AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Public Meeting held on September 21, 2010.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

2 9:54 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 meeting will, please, come to order. Good
5 morning, ladies and gentlemen. This is the
6 September 21, 2010 Public Meeting of the Board
7 of Zoning Adjustment for the District of
8 Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson. Joining me today to my right is
11 the representative of the National Capital
12 Planning Commission, Mr. Jeff Hinkle. To my
13 left is the representative of the Zoning
14 Commission, Michael Turnbull.

15 Copies of today's agenda are
16 available to you and are located to my left in
17 the bin near the door.

18 We do not take any public testimony
19 at our meeting, unless the Board asks someone
20 to come forward.

21 Please, be advised this proceeding
22 is being recorded by a Court Reporter and is

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1 also being webcast live. Accordingly, we must
2 ask you to refrain from any disturbing noise
3 or any actions in the hearing room.

4 Please, turn off all cell phones
5 and beepers, at this time.

6 Mr. Secretary, are there any
7 preliminary matters?

8 MR. MOY: If there are any, Madam
9 Chair, the staff would suggest we take that up
10 as we call the case.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you. Then let's proceed with the agenda.

13 MR. MOY: Madam Chair, good
14 morning, and to other Members of the Board.
15 Of the number of cases for decision, the first
16 two will deal with requests for Modification
17 of Approved Plans.

18 The first being Modification of
19 Approved Plans to Order No. 18037. This is of
20 the Dix Street Corridor Revitalization
21 Partners, LLC, pursuant to ' 3129 of the
22 Zoning Regulations.

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1 As the Board will recall, the
2 original application was approved on March 9,
3 2010.

4 I'm going to read the original
5 relief very quickly, Madam Chair, if you don't
6 mind. And that application was pursuant to 11
7 DCMR 3104.1 and 3103.2, for a special
8 exception under subsection 353.1, and for the
9 construction of more than one structure on one
10 record lot under subsection 2516.1, and
11 variance relief from the number of parking
12 spaces required under subsection 2101.1, from
13 the size of parking spaces required under
14 subsection 2115.1, from the number of
15 contiguous parking compact parking spaces
16 required under subsection 2115.4, from the
17 parking area requirements under subsection
18 2115.10, and from the building lot control
19 requirements under subsection 2516.4, and this
20 was all to allow for the renovation and
21 construction of residential buildings for a
22 new multi-family housing development in the R-

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1 5-A and C-2-A Districts, at premises 400-414
2 Eastern Avenue, N.E., 405-407 Dix Street,
3 N.E., and 61st Street, N.E. This is in Square
4 5260, Lots 2, 17, 18, 19, 28, 800 and 806.

5 The applicant filed the request,
6 Madam Chair, on July 16, 2010. Since their
7 filing, there are two responses. Well, first
8 of all, their filing is identified as Exhibit
9 45 in the case folders.

10 Since their filing, there are two
11 responses in the record. The first is from
12 the Office of Planning dated September 14,
13 2010 identified in your case folder as Exhibit
14 46. OP's recommendation is in support for the
15 minor modification.

16 The second filing, Madam Chair, is
17 from ANC-7C. Their letter dated September 9,
18 2010, but received in the Office of Zoning
19 September 20th. This is untimely in that the
20 responses are required within 10 days of the
21 filing of the request, which would have been
22 July 26, 2009. That document is identified as

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1 Exhibit 47.

2 So apart from that, the Board is to
3 act on the procedures and on the merits of the
4 request for minor modification of approved
5 plans pursuant to the criteria listed in '
6 3129. And that completes the staff's
7 briefing, Madam Chair.

8 CHAIRPERSON MOLDENHAUER: Thank you
9 very much, Mr. Moy. I think before we begin
10 this case, we really need to determine whether
11 or not this qualifies as a minor modification.

12 I think that the distinction here
13 is that this case is actually requesting some
14 new aspects of relief. And when looking at
15 the Reg under ' 3129.6, the standard that is
16 given to us is that there are no changes in
17 material facts upon which the Board based its
18 original approval of the application.

19 Here, additional request is being
20 made, thus, it's more as though the
21 application has been amended and that the
22 applicant actually lists new relief that is

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1 being articulated. Thus, I don't see this as
2 a minor modification. I see this rather as
3 something which would require a new Board
4 hearing.

5 Relief requires that we have a
6 hearing, we have a discussion. It provides
7 the public an opportunity to weigh in on those
8 aspects of relief. If this was simply a
9 modification of relief that had already been
10 articulated, already been determined by the
11 Board, then we could simply evaluate it, as
12 the Board, based on its original decision.

13 But since this is new relief, I
14 think that this would not qualify as a minor
15 modification. That determination also in OP's
16 report, which is our Exhibit No. 46,
17 articulates in Section 2 that, you know,
18 typically they would not consider this to be a
19 minor modification. Even though they do go
20 forward and then evaluate this and indicated
21 they could recommend approval, that's my view.

22 And, at this point, I will open it up to the

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1 Board for additional discussion from other
2 Board Members.

3 Seeing none, then I think we have
4 an agreement. And we will vote then. Mr.
5 Moy, for clarification, I think we would vote
6 then to deny the application for minor
7 modification?

8 MR. MOY: I would like to defer
9 that to OAG, Madam Chair.

10 CHAIRPERSON MOLDENHAUER: OAG,
11 okay.

12 MS. GLAZER: Well, I think the
13 Board has a couple of options. You could set
14 it for a hearing, for instance, or you could
15 have staff work with the applicant to set it
16 for a hearing.

17 CHAIRPERSON MOLDENHAUER: Thank you
18 very much. Then what we will do is we will
19 put on the record that we will recommend that
20 staff work with the applicant to set this for
21 a hearing.

22 MR. MOY: Okay. Very good. Thank

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1 you, Madam Chair.

2 CHAIRPERSON MOLDENHAUER: Thank
3 you.

4 MR. MOY: The second request for
5 modification of approved plans, this is
6 attendant to Order No. 17985 of National
7 Indian Gaming Association, pursuant to ' 3129
8 of the Zoning Regulations.

9 Again, in this case, the original
10 application was approved on November 3, 2009,
11 pursuant to 11 DCMR 3104.1, 3103.2 and 1202,
12 for a variance from the lot occupancy
13 requirements under subsection 403.2, a
14 variance from the rear yard requirements under
15 ' 404, a variance from the nonconforming
16 structure requirements under subsection
17 2001.3, a variance from the driveway width
18 requirements under subsection 2117.8(c)(2),
19 and a special exception to allow the expansion
20 of a building devoted to a nonprofit
21 organization use under ' 217, in the CAP/R-4
22 District at premises 224 2nd Street, S.E. This

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1 is in Square 762, Lot 7.

2 Again, on July 16, 2010, the
3 applicant filed a request for minor
4 modification of approved plans, pursuant to '
5 3129. Their document is identified in your
6 case folders, Madam Chair, as Exhibit 37.

7 The applicant also submitted
8 supplemental information with revised plans,
9 dated September 10, 2010, identified in your
10 folders as Exhibit 40.

11 Because of the original filing and
12 supplemental, the Office of Planning has, in
13 your case folders, two reports. One dated
14 July 26, 2010, the other September 14, 2010,
15 identified as Exhibits 39 and 41,
16 respectively. Both reports are in support of
17 the modification.

18 The only other filing, Madam Chair,
19 in response to the application from the
20 applicant is from ANC-6B, dated July 19, 2010,
21 this was received and logged into the record
22 on July 21, 2010, in support of the request of

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1 the applicant and the document is identified
2 as Exhibit 38.

3 Again, the Board should act on the
4 criteria for minor modification pursuant to
5 3129. That completes the staff's briefing,
6 Madam Chair.

7 CHAIRPERSON MOLDENHAUER: Thank you
8 very much, Mr. Moy. And looking at this case,
9 I have a similar discussion as I did in the
10 previous case. This is a case for minor
11 modification, which we evaluate under ' 3129.

12 And I look to the standards that are
13 articulated in 3129.6.

14 And here, the applicant is seeking
15 a minor modification, but actually requesting
16 additional or new relief that was not
17 previously articulated in the hearing and not
18 previously evaluated, so, obviously, we could
19 not then -- I think those are material changes
20 or material facts, which could not be based on
21 a prior approval of the application, but
22 rather an amendment of the application.

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1 Here as well, we have an OP report
2 which here in section 3, in the second
3 paragraph, it indicates that a change in the
4 requested relief is not normally considered a
5 minor modification.

6 Even though they then go forward to
7 actually provide an analysis for a
8 recommendation and approval, I think that,
9 procedurally, we cannot make a determination
10 on this case without having a full hearing.

11 There is approval by the ANC, our
12 Exhibit No. 38, so I think that, you know,
13 following a full hearing, this should move
14 through quickly or hopefully smoothly. But at
15 the same time, procedurally, I don't feel as
16 though I can grant a minor modification seeing
17 that it does not satisfy the standard.

18 I'll open it up for any additional
19 deliberation from Board Members.

20 COMMISSIONER TURNBULL: Madam
21 Chair, I would concur with you on this and
22 OP's analysis of it. This is a special

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1 exception in the Capitol Hill Interest
2 Overlay. I would just point out that they
3 would be resubmitting their drawings to the
4 Architect of the Capitol for their review.

5 CHAIRPERSON MOLDENHAUER: Thank you
6 very much, Mr. Turnbull. That being said
7 then, I think what we will do is we will
8 handle this case similarly. We will not make
9 a decision on this, but, rather, we will refer
10 it to the staff to provide or work with the
11 applicant to find a date for a hearing on this
12 case.

13 MR. MOY: Yes, thank you, Madam
14 Chairperson.

15 The third case for decision then
16 for the Board's action, rather, is a motion
17 for a two-year extension of the validity of
18 the order to Application No. 17806 of Mid-
19 Atlantic Realty Partners, LLC. And this is
20 pursuant to ' 3130 of the Zoning Regulations.

21 The original application was
22 approved on September 9, 2008, pursuant to 11

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1 DCMR 3103.2, for a variance from the lot
2 occupancy requirements under ' 772, a variance
3 from the rear yard requirements under 774, a
4 variance from the limitation on compact
5 parking space requirements under ' 2115.2, and
6 a variance from the off-street loading
7 facility requirements under subsection 2201.1,
8 to permit the construction of a multiple
9 dwelling residential building with ground
10 floor retail in the DD/C-2-C District. This
11 is at the southeast corner of the intersection
12 of 6th and K Streets, N.W. The property is in
13 Square 484, Lots 23, 811-813 and 826.

14 As the Board will recall or rather
15 on August 6, 2010, the applicant filed their
16 request for this two-year extension. This
17 document is identified in the case folders as
18 Exhibit 27.

19 There is also in your case folders
20 a report from the Office of Planning
21 recommending the Board grant the applicant's
22 request. This is identified as Exhibit 31.

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1 The document is dated September 14, 2010.

2 Very quickly then, the Board is to
3 act on the merits of the request pursuant to
4 the criteria of ' 3130. That completes the
5 staff's briefing, Madam Chair.

6 CHAIRPERSON MOLDENHAUER: Thank you
7 very much, Mr. Moy.

8 Looking at this case, we evaluate
9 this under the standard for 3130.6. And we do
10 have good cause shown in regards to the
11 financial difficulty in obtaining financing,
12 which is a letter dated August 6th from Cassidy
13 and Turley indicating that the applicant has
14 been trying to obtain financing and has had
15 some challenges.

16 And I think that in general, this
17 application is very strong. The only thing is
18 that previously under Chairman Loud, the new
19 standard under 3130 had been revised and
20 modified. And there was a procedural
21 requirement that was articulated, at that
22 time, by Mr. Loud indicating that based on the

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1 higher standard under this requirement,
2 because the regs now require substantial
3 evidence in order to prove good cause, that we
4 were requesting not just a letter from counsel
5 or on behalf of the applicant, but rather
6 under this new higher standard that the
7 applicant actually had to submit an affidavit
8 on their own behalf articulating that they
9 satisfy these standards and attesting to those
10 aspects.

11 So that's the only thing that I
12 believe the application is missing. And for
13 purposes of maintaining a standard requiring
14 all applicants and all parties to satisfy the
15 same standards, I would indicate that while
16 the application, I think, will eventually be
17 sufficient, that we would ask the applicant to
18 amend or supplement the record with a letter
19 specifically, articulated from the applicant,
20 not from counsel, attesting to the standards
21 under the test for the two-year extension.

22 That being said, I'll open it up to

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1 the Board for any additional deliberations
2 from Board Members.

3 MEMBER HINKLE: Madam Chair, I just
4 want to note for the record that I have read
5 the record of this case, including the hearing
6 transcript from September 9, 2010 -- 2008, I'm
7 sorry, and therefore will participate in this
8 case. Thank you. I have no additional
9 comments. Thanks.

10 CHAIRPERSON MOLDENHAUER: Thank you
11 very much. And I appreciate you doing that,
12 because I also have to, for the record,
13 indicate that I have read the record.

14 Are there any additional comments?

15 COMMISSIONER TURNBULL: I would
16 repeat the same information for the record.
17 And I feel that in this case, too, just as you
18 were saying, that we are going to go forward,
19 because we just need to connect the dots, that
20 the information is there, we just need for the
21 record to be able to put things in their place
22 and make the connection for the higher

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1 standard that the former Chairman, Mr. Loud,
2 was saying.

3 CHAIRPERSON MOLDENHAUER: Thank
4 you. Then what we will do is we will continue
5 this case to next week for a decision and ask
6 the applicant to supplement the record.

7 MR. MOY: Okay. Very good. Thank
8 you, Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you.

11 MR. MOY: The next case for Board
12 action is Application No. 18094 of Lauriol
13 Properties, LLC, Cactus Cantina, pursuant to
14 11 DCMR 3104.1, for a special exception to
15 allow a rear addition to an existing one-
16 family row dwelling under ' 223, not meeting
17 the lot occupancy requirements under ' 403, in
18 the R-5-B District at premises 1778 T Street,
19 N.W. The property is in Square 152, Lot 62.

20 As the Board will recall, on
21 September 14, 2010, the Board completed public
22 testimony, closed the record and scheduled its

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1 decision on September 21st. No additional
2 information was required, as the record --
3 well, rather, the Board did request additional
4 information to supplement the record by
5 Thursday, September 16.

6 The applicant did make a filing,
7 Madam Chair, on September 14 at the end of the
8 day. It is timely and that document is
9 identified as Exhibit 29 in your case folders.

10 The Board is to act on the merits
11 of the request for special exception relief
12 from ' 223, not meeting the lot occupancy
13 requirements. And that completes the staff's
14 briefing, Madam Chair.

15 CHAIRPERSON MOLDENHAUER: Thank you
16 very much, Mr. Moy. This case we heard last
17 week. And as Mr. Moy indicated, this is for
18 223 relief. I think that the applicant put on
19 a very strong case. We had testimony from his
20 neighbor supporting the application. We also
21 had testimony from the Office of Planning
22 supporting the application.

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1 Since it's a 223, it is a lower
2 standard that needs to be satisfied. We went
3 through and reviewed the plans. There was one
4 letter of opposition, which is our Exhibit No.
5 26, which was from a Ms. Poteet, who resided
6 at and owns -- I'm sorry, she does not reside
7 there. She owns 1774 T Street, N.W.

8 And while, you know, she
9 articulated some issues that are relevant,
10 there were also some issues in her letter of
11 concern that do not apply to the standards in
12 which we are required to evaluate these tests.

13 Some of them had actually to do more with
14 construction issues or general concerns of the
15 use, which our Board does not articulate or
16 does not go into in deliberating on a case.

17 However, there were some concerns
18 in regards to facts that we do evaluate, which
19 had to do with conforming with the
20 architectural nature of the block, making sure
21 that the facade was in harmony with the
22 surrounding community. And those aspects we

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1 did inquire of the applicant on and the
2 applicant indicated that they were going to be
3 maintaining the facade and simply just
4 improving it, but not, you know, taking away
5 from any of the existing architectural aspects
6 of the building. And that the addition would
7 not be visible from 17th street.

8 And I think that based on the
9 record and relying on OP's analysis, I think
10 that the applicant has satisfied all the
11 standards for the 223 relief that is being
12 sought in this case. And I would be for
13 approving it.

14 That being said, I will open up the
15 floor for additional deliberation.

16 COMMISSIONER TURNBULL: I would
17 concur with you 100 percent. I think although
18 Ms. Poteet's comments are, you know, valid, I
19 think we did address most of those in the
20 hearing. And I think I feel satisfied that
21 this application does meet the parameters that
22 we are looking at.

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1 And I think the only thing we were
2 missing was a letter authorizing
3 representation of Mr. Sanchez or Mr. Rueda,
4 the architect. I forget which one we --

5 CHAIRPERSON MOLDENHAUER: Yes, I
6 believe it was the applicant authorizing the
7 architect to --

8 COMMISSIONER TURNBULL: To speak on
9 his behalf.

10 CHAIRPERSON MOLDENHAUER: -- speak
11 on his behalf.

12 COMMISSIONER TURNBULL: Yes, right.
13 And we --

14 CHAIRPERSON MOLDENHAUER: They
15 initially had a subdivision.

16 COMMISSIONER TURNBULL: That's
17 right. And we do have that. So I feel
18 confident going ahead with this.

19 CHAIRPERSON MOLDENHAUER:
20 Wonderful. Well, then at this point, I will
21 put forth a motion, a motion to support the
22 Application No. 18094 for special exception

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1 relief under 223 for an addition to an
2 existing single-family attached dwelling at
3 1778 T Street, N.W. from 403, to allow 69.3
4 percent lot occupancy at the premises.

5 A motion has been made. Is there a
6 second?

7 COMMISSIONER TURNBULL: Second.

8 CHAIRPERSON MOLDENHAUER: The
9 motion has been made and seconded.

10 All those in favor say aye.

11 ALL: Aye.

12 MR. MOY: Madam Chair, before I
13 read the final vote, we do have an absentee
14 ballot from Ms. Sorg, who also participated on
15 the application, and her absentee vote is to
16 approve the application. So that would give a
17 final vote of 4-0-1, this is on the motion of
18 the Chairperson, Ms. Moldenhauer, to approve
19 the application for relief from special
20 exception 223, not meeting the lot occupancy
21 requirements under 403. Seconding the motion
22 Mr. Turnbull, in support of the motion, Mr.

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1 Hinkle and, of course, Ms. Sorg. No other
2 Board Member participating.

3 So again, the final vote is 4-0-1.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much, Mr. Moy.

6 MR. MOY: Is there a provision for
7 a summary order on this case, Madam Chair?

8 CHAIRPERSON MOLDENHAUER: Yes. The
9 Board would waive the requirements and request
10 a summary order.

11 MR. MOY: Thank you. The next
12 application for Board action is Application
13 No. 18096. This is of Visions of Victory CDC,
14 pursuant to 11 DCMR 3104.1, for a special
15 exception under ' 353, to allow the
16 construction of a new 91-unit residential
17 apartment building under ' 353, in the R-5-A
18 District at premises 2513-2547 Alabama Avenue,
19 S.E. The property is in Square 5730, Lots 39,
20 923 and 924.

21 As the Board will recall, on
22 September 14, 2010, the Board completed public

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1 testimony, closed the record and scheduled its
2 decision on September 21st.

3 The Board requested additional
4 information to supplement the record, which is
5 an ANC letter. We do have in your case
6 folders, Madam Chair, a letter supplied by the
7 applicant from ANC-8B identified as Exhibit
8 33. The document is dated September 14, 2010.

9 The Board is to act on the merits
10 of the request for special exception relief.
11 And that completes the staff's briefing, Madam
12 Chair.

13 CHAIRPERSON MOLDENHAUER: Thank you
14 very much, Mr. Moy. This case, I think, we
15 went through with the applicant. It was a
16 very strong case. There were only very
17 limited concerns of our's, one about parking,
18 which I think the applicant sufficiently
19 addressed, and then assuaged any concerns of
20 our's, at least of mine.

21 In addition to that, you know, we
22 had asked what type of dialogue the applicant

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1 had with the ANC. The new exhibit, which we
2 permitted him to submit to the record, which
3 is our Exhibit No. 33, does state that the
4 ANC-8B fully supports the application.

5 Unfortunately, it does not satisfy
6 our requirements in order to provide it great
7 weight. It does not articulate that a quorum
8 was present nor does it state what the vote
9 was in support of this application, so while
10 it does provide us with some additional
11 reference and documentation, we will take it
12 in as an exhibit, we cannot give it great
13 weight.

14 But I think that despite that, the
15 application is very full. I think that I
16 would rest on the OP report, which clearly
17 articulates the standard for 353. And I would
18 then look to any additional Board Members for
19 any additional deliberation.

20 COMMISSIONER TURNBULL: I would
21 agree 100 percent. I think that although the
22 letter doesn't really 100 percent meet it, it

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1 does say fully support, although it would have
2 been better if they had technically said, you
3 know, by quorum. But no, I would agree with
4 you.

5 We really had no issues with that
6 whole project in our deliberations last week,
7 so this outstanding letter would be fine with
8 me. I would accept this.

9 MEMBER HINKLE: Madam Chair, I
10 would certainly agree with your summary as
11 well and I have no further comments.

12 CHAIRPERSON MOLDENHAUER: Then that
13 being said, I will submit a motion to support
14 Application 18096 for Visions of Victory, for
15 a special exception for a new residential
16 development under ' 353 at 2513-2547 Alabama
17 Avenue, S.E.

18 A motion has been made. Is there a
19 second?

20 MEMBER HINKLE: Second.

21 CHAIRPERSON MOLDENHAUER: The
22 motion has been made and seconded.

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1 All those in favor say aye.

2 ALL: Aye.

3 MR. MOY: Madam Chair, staff would
4 record the vote as 4 -- well, rather, I'm
5 getting ahead of myself. We do have an
6 absentee ballot from Ms. Sorg, Madam Chair,
7 who participated on the application. And her
8 absentee vote is to approve the application,
9 which would give a final vote of 4-0-1.

10 This would be on the motion of the
11 Chairperson, Ms. Moldenhauer, to approve the
12 request for special exception relief under '
13 353. Seconding the motion, Mr. Hinkle, in
14 support of the motion are Mr. Turnbull and, of
15 course, Ms. Sorg. So that would give a vote
16 of, again, 4-0-1. No other Board Member
17 participating.

18 CHAIRPERSON MOLDENHAUER: Thank you
19 very much, Mr. Moy. The Board, since there is
20 no opposition in this case, would waive its
21 requirements and ask for a summary order.

22 MR. MOY: Okay. Very good. Thank

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1 you. The next action for the Board is to
2 Application No. 18082. This is of Angie and
3 Scott Truesdale, pursuant to 11 DCMR 3103.2,
4 for a variance from the lot occupancy
5 requirements under ' 403, a variance from the
6 rear yard requirements under ' 404, and a
7 variance from the nonconforming structure
8 provisions under subsection 2001.3. This
9 would allow a rear deck addition serving a
10 one-family row dwelling in the R-4 District at
11 premises 1019 Florida Avenue, N.E. The
12 property is in Square 956, Lot 39.

13 As the Board will recall, on
14 September 14th of this year, the Board
15 completed public testimony, closed the record
16 and scheduled its decision on September 21st.

17 The Board did not request any
18 additional information being that the record
19 was full. So the Board is to act on the
20 merits of the request for the variance relief,
21 the multiple variance relief. And that
22 completes the staff's briefing, Madam Chair.

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1 CHAIRPERSON MOLDENHAUER: Thank you
2 very much, Mr. Moy. This case we had
3 continued and it was definitely a challenging
4 case. There is many times in our Board
5 deliberation where we personally feel for the
6 applicant and we really want to encourage him,
7 being a resident of the District, you want to
8 encourage individuals to stay in the District
9 and to be able to have homes which can
10 accommodate all of their desires and all of
11 their needs.

12 Unfortunately, though our job, my
13 job is to apply the standards of the regs to
14 each application, you know, consistently and
15 not, unfortunately, to apply things which are
16 not permitted under the regs to actually
17 apply.

18 You know, so that being said, you
19 know, this application was for a variance. A
20 variance is one of the higher standards in
21 which we have to apply. It's a three-prong
22 test.

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1 First, in which we have to find
2 that there is some sort of exceptional
3 circumstance with the property, whether that
4 is the size, topography, maybe potentially a
5 confluence of multiple factors. But,
6 unfortunately, in this case, before we can
7 even get to the second-prong or the third-
8 prong, we have to get past that first-prong.

9 And in this case, as we went
10 through with the applicant, this case was
11 continued on two different occasions trying to
12 evaluate whether or not the applicant could
13 satisfy that first-prong, finding some aspect
14 of the lot which would satisfy sort of the
15 exceptional circumstance.

16 And the applicant articulated, you
17 know, the need for security and mostly the
18 fact that there was -- that they did not have
19 public access to areas which were not included
20 in the lot, but rather that were part of the
21 public right-of-way or public property that
22 would potentially be used privately for their

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1 own use.

2 There was discussion back and forth
3 with the Office of Planning. Office of
4 Planning consistently evaluated the case and
5 determined that it did not satisfy the first-
6 prong and that this was not exceptional or
7 there was nothing exceptional or unique about
8 this property, but rather that the property's
9 size and shape were very standard.

10 And that the Office of Planning
11 actually looked at it in regards to the
12 properties right next to it on Florida Avenue,
13 which all appear to be about the exact same
14 size and topography and shape of lot.

15 In addition to that, you know,
16 there were questions as to, well, you know,
17 let's evaluate it in a larger scale on
18 potentially the square and even when doing
19 that, you know, the applicant's property size
20 or shape was not specifically unique.

21 And I can't seem to satisfy the
22 first-prong in my own analysis, in my own mind

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1 by stating that property not within the lot,
2 such as public space, could be considered,
3 especially when, you know, a majority of the
4 properties on Florida Avenue on that block do
5 not have that benefit of potentially that
6 public space.

7 And in addition to that, there are
8 many properties in the city which have that
9 public space or don't have that public space
10 and I don't find that, unfortunately, to be a
11 unique aspect or an exceptional circumstance
12 which would then give rise to practical
13 difficulty, especially when you are looking at
14 a situation where we are talking about 94.7
15 percent lot occupancy.

16 Unfortunately, you know, we have to
17 lots of times also evaluate the amount of
18 relief, the point of relief to the standard
19 and to the degree in which the standards are
20 being satisfied.

21 And here, while it is, you know, a
22 challenging situation for the applicant,

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1 because they already started off with the 78
2 percent lot occupancy, it is still I have to
3 look at a case and indicate that, you know,
4 should we grant somebody a 94.7 percent lot
5 occupancy is quite extraordinary.

6 And that being said, there are no
7 extraordinary or exceptional conditions on
8 this lot. The ANC is in support of this
9 application and that would be given great
10 weight to that vote.

11 We did have an additional exhibit
12 which indicated that the individuals for the
13 ANC that voted against it were concerned about
14 the standard, in fact, that the standard was
15 not met.

16 We do have support from all of the
17 applicant's neighbors. However, those letters
18 of support would go towards the third-prong
19 and not the first-prong. And again, as I
20 said, I unfortunately just cannot articulate a
21 reason in which how this property would
22 satisfy the first-prong.

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1 That being said, I'll open this up
2 to any additional deliberation from other
3 Board Members.

4 MEMBER HINKLE: Thank you, Madam
5 Chair. I would first like to note for the
6 record that in addition to attending the
7 hearing last week, I have reviewed the record
8 for this case, as well as the hearing
9 transcripts for July 13, 2010 and will be
10 participating in this case.

11 With that said, I think your
12 analysis of the case is pretty thorough. I
13 don't necessarily have anything else to add to
14 this. I do note that, and I would like to
15 highlight the comment by the ANC-6E in their
16 letter to the Board, which was dated April 9,
17 2010, which is our Exhibit 23.

18 That while the Commission voted 4-3
19 to support the applicant's request for a
20 variance, they noted in this letter that such
21 a benefit could encourage further development
22 and rehabilitation of older homes in the area.

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1 And I think that's a good thing for
2 the District. And I hope there is a way or a
3 means in the future for the District to
4 explore the Zoning Regulations and see how
5 there are some opportunities, through some
6 practical moves, to allow applicants, such as
7 what was in this case, to reasonably utilize
8 their properties in a manner that was proposed
9 with this proposal. Thank you.

10 CHAIRPERSON MOLDENHAUER: Thank
11 you. And I do echo your remarks in regards to
12 -- there is a Zoning Rewrite going on and
13 that, you know, our hands are tied sometimes
14 and that's then an opportunity for the
15 applicant or the citizens to get involved in
16 that process.

17 That being said, at this point in
18 time, I will submit a motion to deny
19 Application No. 18082.

20 MEMBER HINKLE: Seconded.

21 CHAIRPERSON MOLDENHAUER: The
22 motion has been made and seconded.

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1 All those in favor say aye.

2 MEMBER HINKLE: Aye.

3 CHAIRPERSON MOLDENHAUER: Aye. Mr.
4 Moy, I believe we have some absentee ballots.

5 MR. MOY: Yes, Madam Chair. Before
6 I give the final vote, of course, we have two
7 absentee votes from Board Members who
8 participated on the application. The first is
9 from Ms. Sorg and her absentee vote is to
10 approve the application. The second absentee
11 vote is from Mr. Hood, who also participated,
12 and his absentee vote is to deny the
13 application.

14 So I believe that would give a
15 final vote of 3-1-1. This is on the motion of
16 the Chair, Ms. Moldenhauer, to deny the
17 application, seconded by Mr. Hinkle. So, of
18 course, in support of that denial would be
19 from Mr. Hood. Opposed to the motion would be
20 Ms. Sorg. No other Board Members
21 participating.

22 So again, that would be a final

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1 vote of 3-1-1. Okay.

2 CHAIRPERSON MOLDENHAUER: Thank you
3 very much, Mr. Moy. I believe the next action
4 of the Board and the last for the Special
5 Public Meeting is Application No. 18047 of
6 James Ravitz, pursuant to 11 DCMR 3103.2.

7 Staff reminds the Board that this
8 application had been amended, so the final
9 ruling for the relief would be a variance from
10 the court width requirements under ' 406, and
11 a variance from the nonconforming structure
12 provisions under subsection 2001.3, to allow a
13 rear addition to an existing one-family row
14 dwelling in the R-3 District at premises 1425
15 33rd Street, N.W. The property is in Square
16 1244, Lot 172.

17 As the Board will recall, on April
18 6, 2010, the Board called the application and
19 voted. The vote came to a 2-2-1. Not having
20 a majority vote, the motion failed. And the
21 action on this application was tabled.

22 And here we are today, so the Board

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1 is to act again on the merits of the
2 application for variance relief. That
3 completes the staff's briefing, Madam Chair.

4 CHAIRPERSON MOLDENHAUER: Thank you
5 very much, Mr. Moy. This case, as Mr. Moy
6 articulated, we have already deliberated on,
7 but, unfortunately, based on not having a
8 third Mayoral Appointee, there was a split
9 vote in which we could not take action,
10 because the Board requirements require that we
11 have a majority vote one way or another in
12 order to take any action.

13 So that being said, we have now a
14 new NCPC rep who had, obviously, not
15 previously participated in the case. And
16 trying to provide some action on this case,
17 rather than letting it continue to sit, we
18 have asked Mr. Hinkle to read the record and
19 to see if we then now can evaluate this case
20 and potentially maybe break the 2-2 vote.

21 If we can't, then what we will do
22 is it will continue to sit as a 2-2 vote until

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1 our additional third Mayoral Appointee has
2 been nominated by the Mayor and confirmed by
3 the Council.

4 That being said, Mr. Hinkle, do you
5 want to identify that you have read the
6 record?

7 MEMBER HINKLE: Yes, Madam
8 Chairman, I have read the record and will
9 participate in this case.

10 CHAIRPERSON MOLDENHAUER: Thank you
11 very much. I'll just kind of get us started
12 with a very preliminary discussion.
13 Obviously, the prior discussions and
14 deliberations on this case are incorporated.
15 And as Mr. Hinkle indicated, he has already
16 kind of gone through that and listened to and
17 read the transcript for those prior
18 deliberations.

19 In this case, we have an
20 application in which the applicant is seeking
21 a variance. A variance, as I indicated
22 earlier this morning, is one of our higher

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1 standards to satisfy. This was a question,
2 again in my mind, as to whether or not the
3 applicant satisfied or could pass the first-
4 prong of the test, whether there existed an
5 exceptional or extraordinary condition
6 inherent in the property which would then
7 eventually give rise to the practical
8 difficulty.

9 Here, the applicant articulated
10 four different standards or four different
11 elements in which they believe the property to
12 be exceptional or extraordinary. One, that
13 the lot was small and that it was smaller than
14 two-thirds of the residential lots, that the
15 property was rendered nonconforming by the new
16 application of the Zoning Regs.

17 The second standard, as I
18 articulated previously, I don't apply
19 considering that then a majority of the
20 properties in the District of Columbia would
21 then automatically be able to satisfy the
22 variance standard and the variance is actually

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1 supposed to be a very unique instance in where
2 the Zoning Regs are going to be providing
3 relief to the Zoning Regs because of an
4 exceptional circumstance.

5 The third articulation would be
6 that there is an existing one-story rear
7 addition previously, potentially, that had
8 existed back in 1912 to 1928.

9 That being said, that was already
10 removed and the fact that that was removed
11 previously, it's not as though they are
12 renovating or improving a historic aspect to
13 the building.

14 In addition to that, the fourth
15 element was that there was an exceptionally
16 small second floor room that was not suitable
17 for habitability. The applicant articulated
18 that, you know, any additional space in the
19 area in which you live would be beneficial.

20 And I think that while it may be
21 smaller than a bedroom, it could be used and a
22 benefit to have. Any additional space would

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1 be a benefit. You know, thus, if he desired
2 to make an addition, he could make an addition
3 that did conform with the Zoning Regs, rather
4 than trying to seek an exemption.

5 That being said, the only aspect
6 which I think, you know, has to really then be
7 deliberated is whether or not the lot is
8 exceptionally small. And I think that there
9 were other lots, other lots on the square that
10 were similar, if not larger.

11 OP also evaluated this and
12 indicated that, you know, they did not find
13 that standard to be satisfied and I attend to
14 agree with them as I had previously done.
15 While the applicant does, again, have a lot of
16 support from neighbors and from the community,
17 I don't think that that would go towards the
18 first-prong.

19 And my question is whether or not
20 they satisfy the first-prong. And I don't see
21 that they do.

22 That being said, I'll open this up

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1 for deliberation.

2 COMMISSIONER TURNBULL: Madam
3 Chair, I would concur with your analysis. It
4 was an excellent analysis. I actually made
5 use of what's a wonderful tool, which is the
6 Office of Zoning's video archives, and went
7 back and went through the hearing and then
8 went through our discussion of it on the
9 Public Meeting.

10 And my position still hasn't
11 changed. And I agree with your stance on it.

12 It's just like the previous case. It's a
13 little difficult. It's awkward at times when
14 you look at a property like this and you
15 almost want to make a case for trying to
16 develop it in some way.

17 But the way the regulations are so
18 stated, and that's why it's very difficult to
19 meet the variance test, and a lot of people
20 have had more success going with a special
21 exception, but that depends upon the applicant
22 working with OP and what is the best for a

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1 particular case.

2 And I would echo the thoughts that
3 were stated on the previous case, that it may
4 be an opportunity for, you know, the Zoning
5 Regulations to look at cases like this and see
6 whether there is some opportunities to amend
7 the Zoning Regulations in some way to get
8 minor changes on this.

9 But as it is right now, my stance
10 is still the same. And although Mr. Dettman
11 made a case about how the Zoning Regulations
12 can somehow be a practical difficulty, again,
13 I find that hard to put as a case, because,
14 otherwise, every property that is below a
15 minimum standard could be using it and we
16 could have a lot of awkward developments in
17 that way.

18 So it's unfortunate, but, you know,
19 the regulations are meant to protect the zones
20 and, at this point in time, as I said, I think
21 we had a wonderful, we had an excellent
22 discussion on this in the hearing and in the

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1 meeting and my stance, my position is still
2 the same and I would deny the application.

3 MEMBER HINKLE: Thank you, Madam
4 Chair. Both yourself and Mr. Turnbull have
5 made a pretty persuasive argument in terms of
6 whether or not this property meets an
7 exceptional condition. And I'm persuaded that
8 it does not, at this time, and, thus, does not
9 meet the first-prong of the variance test.

10 And so I'm inclined, at this point,
11 to not support the request.

12 CHAIRPERSON MOLDENHAUER: That
13 being said then, if there is no additional
14 deliberation, I will submit a motion to deny
15 Application No. 18047 for a variance relief
16 under 406 and 2001.3.

17 A motion has been made. Is there a
18 second?

19 COMMISSIONER TURNBULL: Second.

20 CHAIRPERSON MOLDENHAUER: The
21 motion has been made and seconded.

22 All those in favor say aye.

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1 ALL: Aye.

2 MR. MOY: Staff would record the
3 vote -- well, rather, the office is in receipt
4 of an absentee vote from Ms. Sorg, who also
5 participated on the application, Madam Chair.

6 And her absentee vote is to approve the
7 application. This would give a resulting vote
8 of 3-1-1.

9 This is on the motion of the
10 Chairperson, Ms. Moldenhauer, to deny the
11 application, seconded by Mr. Turnbull. Also
12 in support of the motion, Mr. Hinkle. Ms.
13 Sorg in opposition. And no other Board Member
14 participating. So again, the final vote is 3-
15 1-1. The application fails.

16 CHAIRPERSON MOLDENHAUER: Thank you
17 very much, Mr. Moy.

18 I believe we have concluded our
19 Public Meeting.

20 MR. MOY: Madam Chair, before you
21 hit the gavel?

22 CHAIRPERSON MOLDENHAUER: Yes?

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1 MR. MOY: There is one other
2 housecleaning matter that I believe you wanted
3 to announce for the record, which has to do
4 with the Gerber case, 18097.

5 CHAIRPERSON MOLDENHAUER: Yes. For
6 the public record on Application No. 18097,
7 Gerber, this is to notify the Office of
8 Planning that the date previously provided for
9 them to supplement the record was October 14th
10 and that date was incorrect. And that they
11 should be provided seven days prior to the
12 hearing, which would be October 19th to
13 supplement their Office of Planning report for
14 that case.

15 So that is all. Thank you.

16 MR. MOY: That completes the
17 Special Public Meeting, Madam Chair. Thank
18 you.

19 CHAIRPERSON MOLDENHAUER: Thank
20 you.

21 (Whereupon, the Public Meeting was
22 concluded at 10:44 a.m.)

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