

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JULY 13, 2010

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:
MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Vice Chairman (NCPC)
NICOLE SORG, Member

ZONING COMMISSION MEMBERS PRESENT:
ANTHONY J. HOOD, Chairman
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:
CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
LORI MONROE, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on July
13, 2010.

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

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

WELCOME:

Meridith Moldenhauer.3

SHIRLEY H. COX:

APPLICATION NO. 18074:

For Decision.5

Postponed until July 27, 2010

PMDP-GA LLC, ON BEHALF OF CENTRAL UNION

MISSION:

APPLICATION NO. 18078:

For Decision.8

VOTE TO APPROVE APPLICATION 18078 (4-0-1):. . 24

SHOMARKA KEITA:

APPLICATION NO. 18065:

For Decision.25

PRELIMINARY MATTER:

Additional Evidence Submitted After Record

Was Closed.27

VOTE TO APPROVE APPLICATION 18065 (3-0-2):. . 34

APPELLANT'S MOTION FOR RECONSIDERATION OF

APPEAL OF STEPHEN BRUCE:

APPLICATION NO. 17966-A:

For decision.35

PRELIMINARY MATTER:

Late Filing of the Motion for

Reconsideration36

VOTE TO DENY MOTION FOR RECONSIDERATION OF

APPEAL ON APPLICATION NO. 17966-A (4-0-1):. . 40

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

9:48 a.m.

BZA CHAIR MOLDENHAUER: This meeting will please come to order. Good morning, ladies and gentlemen. This is the July 13th, 2010 public meeting of the Board of Zoning Adjustments for the District of Columbia.

My name is Meridith Moldenhauer, chairperson. Joining me today is are Vice-Chair Shane Dettman, representative of the National Planning Commission. To his right, Peter May, representative of the Zoning Commission. And to my left, Nicole Sorg, mayoral appointee.

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

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please be advised that this

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1 proceeding is being recorded by a court
2 reporter and is also being webcast live.
3 Accordingly, we must ask you to refrain from
4 any disturbing noise or actions in the hearing
5 room. Please turn off all beepers or cell
6 phones.

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

9 MR. MOY: Yes, Madam Chair, but
10 staff would suggest that the Board address
11 those preliminary matters on a case-by-case
12 basis.

13 BZA CHAIR MOLDENHAUER: Thank you.
14 Also, I'll be changing the agenda around a
15 little bit, so I'll just announce the order
16 that we'll be going through the cases. We'll
17 be taking Sheila Cox' case first, then Central
18 Union Mission, then Keita and then Stephen
19 Bruce as the last decision case for the
20 morning.

21 So, if we can then call the first
22 case?

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1 MR. MOY: Yes, thank you. Good
2 morning, Madam Chair, Members of the Board.

3 The first of four cases for
4 decision, as you said, is Application No.
5 18074. This is of Shirley H. Cox, pursuant to
6 11 DCMR 3104.1, for a special exception to
7 establish a child development center. This is
8 for 18 children, three staff. On June 22nd
9 the application was amended to 15 children
10 under the section 205 in the R-2 District at
11 premises at 3008 K Street, Southeast, Square
12 5482, Lot 8.

13 Again, on June 22nd, 2010 the
14 Board completed public testimony, closed the
15 record and scheduled its decision on July
16 13th, 2010.

17 The Board requested additional
18 information to supplement the record from the
19 applicant, ANC 7A, the Office of the State
20 Superintendent of Education and kept the
21 record open for responses, especially from
22 Deborah Lake Hinkle who had party status.

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1 In your case folders, Madam Chair,
2 are three filings. The first is from OSSE, a
3 letter dated July 6th, 2010, identified as
4 Exhibit 29. The second filing is from the
5 applicant dated July 7th, 2010, filed into the
6 record July 8th, identified as Exhibit 30.
7 And finally, this morning, today, July 13th,
8 the office received a filing from Ms. Deborah
9 Lake Hinkle and would be identified as Exhibit
10 31 for the Board's consideration.

11 The Board is to act on the merits
12 of the special exception request to establish
13 a child development center for 15 children and
14 three staff under section 205.

15 That completes the staff's
16 briefing, Madam Chair.

17 BZA CHAIR MOLDENHAUER: This case
18 is before us, but at the initial hearing we
19 had specifically provided that the record was
20 going to remain open for certain documents.
21 And I had specifically stated to the
22 applicant, and there was actually a dialogue

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1 about how those documents were going to be
2 served on party status members. There was a
3 discussion about hand delivering those. My
4 understanding is that those documents had not
5 been served on the party status individuals,
6 Ms. Hinkle and Ms. Walker.

7 And so based on that, I'm going to
8 instruct the applicant to ensure that those
9 documents get served. We have a document
10 dated July 7th, which was received in our
11 office on July 8th from the applicant, that
12 that letter along with the additional exhibits
13 from OSSE, get served on the party status
14 individuals, Ms. Hinkle and Ms. Walker, by no
15 later than this Friday the 16th. I will then
16 provide the party status applicant an
17 opportunity to respond to that by the 23rd,
18 which is Friday the 23rd. We then will
19 reconvene the decision of this case until
20 Tuesday, July 27th. And that will conclude
21 our review of this case at this time.

22 MR. MOY: Very good. Thank you,

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1 Madam Chair.

2 The next application would be
3 Application No. 18078 of PMDP-GA. LLC on
4 behalf of Central Union Mission, pursuant to
5 11 DCMR 3104.1 and 3103.2. This is for a
6 variance from the height requirements under
7 section 770, a variance from the parking
8 requirements under subsection 2101.1, a
9 variance from the loading requirements under
10 subsection 2201.1, a special exception to
11 permit the development of a property in excess
12 of 12,000 square feet with the Georgia Avenue
13 Commercial Overlay under subsection
14 1330.19(b), a special exception from the
15 design guidelines of the Overlay under
16 subsection 1330.2, and finally, a special
17 exception from the roof structure requirements
18 under subsection 411.11, to construct a new
19 83-unit apartment building with ground floor
20 retail in the GA (Georgia Avenue Overlay)/C-3-
21 A District at premises 3506 Georgia Avenue,
22 Northwest, 3510 Georgia Avenue, Northwest,

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1 3512 Georgia Avenue, Northwest, and 714 Newton
2 Place, Northwest. This is in Square 2829,
3 Lots 825, 826, 830 and 831.

4 As the Board will recall, on June
5 22nd, 2010 the Board completed public
6 testimony, closed the record and scheduled its
7 decision on July 13th. The Board did not
8 request any supplemental information for the
9 record. The Board is to act on the merits of
10 the multiple variance and special exception
11 requests.

12 And that completes the staff's
13 briefing, Madam Chair.

14 BZA CHAIR MOLDENHAUER: Thank you
15 very much, Mr. Moy.

16 At this time what we'll do is, to
17 begin our deliberation, I'll turn to Mr. May
18 to address some of the initial issues in
19 regards to the relief that's being sought.

20 COMMISSIONER MAY: Okay. For this
21 case, there are six different variances or
22 special exceptions that are being sought.

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1 The overall merit of the project
2 seems to be rather clear, being an all-
3 affordable housing project. And working with
4 a constrained site, you know, it's ordinary in
5 shape, but it's tight given the density that
6 is allowed and given the difficulties of
7 trying to configure things like parking and so
8 on within the structure. And so, the
9 variances are driven by trying to achieve that
10 density for this, I think, worthy purpose and
11 not being able to fit everything in quite
12 exactly. And I think that the applicant is
13 trying to make the case that trying to build
14 out this project to the allowable density and
15 to meet the laudable goals of affordable
16 housing, it's necessary to have some relief
17 from certain requirements. It would be
18 practically difficult to try to meet all of
19 the requirements.

20 I'll go through these one-by-one.
21 I won't have a lot to say on the particulars,
22 but the first is area variance for the

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1 increase in building height from 70 to 73
2 feet, four inches. That's one that I think is
3 an easy hurdle to clear again because of the
4 constrained site and the allowable density,
5 the inclusionary zoning, additional FAR and so
6 on, and it makes sense to be able to try to
7 accommodate that. And it really has only a
8 nominal effect on the surrounding area.

9 The area variance to reduce the
10 number of off-street parking from 42 spaces to
11 29 spaces, I think this is probably the
12 biggest issue of the project and it is the one
13 where the ANC specifically flagged an issue.
14 They otherwise have very strong support for
15 the project. But they are concerned about the
16 fact that it provides less parking than is
17 required by the Zoning Regulations. This did
18 not seem to trouble the Department of
19 Transportation who believes that reducing the
20 number of parking spaces is actually a benefit
21 to the project.

22 On a side note, I would take

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1 significant exception with the report that we
2 received from DDoT which applauds the
3 reduction from 42 spaces to 29 spaces. As far
4 as I'm concerned, DDoT's position, when they
5 come to the Zoning Commission, is to speak on
6 whether a particular project meets the zoning
7 requirements with regard to parking, and where
8 it does not, why it is okay. And instead,
9 they are in effect actively advocating for a
10 policy that's contrary to what the Zoning
11 Regulations state.

12 And I hope DDoT is paying
13 attention to this, or someone forwards the
14 transcript to them, or something like that.
15 It is not their job to come here and try to
16 make policy about parking. That is the job of
17 the Zoning Commission and the Zoning
18 Commission is actively taking that up right
19 now. When they come here, they should be
20 speaking to what the Zoning Regulations say
21 and why a project is okay is not okay because
22 of the extent to which it varies from those

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1 regulations.

2 That having been said, the fact
3 that they did address some of those concerns,
4 they did explain why they think it is okay.
5 I think the Office of Planning also stated
6 that. And the Board studied this issue or
7 considered this in the hearing and I think got
8 a reasonable explanation for the complications
9 of trying to accommodate the additional 13
10 spaces with the building. And I don't believe
11 that there is some easy fix to this or some
12 way to change the plan of the building that
13 would allow them to easily get to the required
14 number of spaces, and I do see that there is
15 a practical difficulty there.

16 Next area variance is to reduce
17 the size of the loading berth from 55 feet to
18 30 feet and the size of the loading platform
19 from 200 square feet to 100 square feet and to
20 eliminate the requirement for one delivery
21 space. I think all of those make sense given
22 the use of the building and the constraints,

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1 the difficulty that that would pose on the
2 building if they would try to accommodate all
3 of those loading requirements.

4 There are two special exceptions
5 that relate more specifically to I think the
6 Georgia Overlay District design requirements
7 and then there's an exception to permit the
8 construction on a building on a lot of 12,000
9 square feet or more in area. I think that the
10 test has been met in both of those cases.
11 This is one of those circumstances I think
12 where the intention of the Zoning Regulations
13 are not being significantly undermined by
14 allowing this project to go forward.

15 The special exception with regard
16 to the permitting a roof structure of varying
17 heights, this is the one case where I think
18 that the applicant did not make a case that a
19 roof structure of varying heights is somehow
20 necessary or dictated by either the nature of
21 the site or some other constraint on the
22 project overall. They simply said that they

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1 think it's better to have a roof structure of
2 varying heights.

3 And, you know, I guess maybe I'm
4 running through these things and adding a
5 little bit more of my opinion about where they
6 stand, but that's the summary of the issues as
7 I see them and would be happy to have further
8 discussion.

9 BZA CHAIR MOLDENHAUER: Thank you
10 very much, Mr. May.

11 I think that you really have
12 identified two of the more poignant issues
13 here in this case; one, which is the off-
14 street parking variance; and the other one is
15 the roof structures. So, I'll open up the
16 floor. If there any other issues that people
17 or Members feel are important, we can discuss
18 those. We'll open up the floor for any
19 additional discussion on those elements.

20 VICE CHAIRMAN DETTMAN: Thank you,
21 Madam Chair. I have nothing much to add. I'm
22 in full agreement with Mr. May's summary of

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1 the case, as well as what appears to be his
2 position on all of the areas of relief. And
3 I'm looking at OP's report and I'm in support
4 of the areas of relief identified as Nos. 1
5 through 5 on the first page of their report,
6 and don't think that the applicant quite made
7 the case for the special exception under
8 411.11 for the uniform height of the roof
9 structures.

10 Just in terms of the overall
11 variance test, I think while it's a rather
12 large site; it's above 18,500 square feet,
13 it's fairly narrow, which puts constraints on
14 the layout of the building and where the
15 apartment units can be located and the
16 arrangement of the corridors, which drives the
17 height variance. And then of course, below
18 grade is creating a practical difficulty for
19 the parking and the loading.

20 For the roof structure special
21 exception, I don't think that they made the
22 case simply because under 411.11 it states

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1 that wherein practicable because of an
2 operating difficulty, size of the building lot
3 or other conditions related to the building or
4 surrounding area that would make full
5 compliance unduly restrictive, costly or
6 unreasonable.

7 And I think just looking at the
8 prehearing statement at page 18 the applicant
9 states that to create a uniform height for
10 both the elevator to override and the rest of
11 the roof structure would result in an
12 unnecessarily large penthouse. And so, they
13 don't really tie it to the standard that needs
14 to be met under 411.

15 They go on to say that the relief
16 would not adversely effect the neighboring
17 property, which I'm sure is true, but
18 nonetheless the roof structure provisions
19 exist for a specific purpose. And you can
20 find that purpose under 411.1, which says the
21 purpose of these regulations is to exercise a
22 reasonable degree of architectural control

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1 upon roof structures. And one of them is
2 uniform height, consistent materials and
3 whatnot, and, you know, a certain standard
4 needs to be met in order to deviate from those
5 certain design criteria.

6 So, I think it's more of a
7 personal preference rather than some kind of
8 specific characteristic of the size of the
9 building, the lot or what have you that's
10 driving the applicant's desire for such
11 relief.

12 BZA CHAIR MOLDENHAUER: Thank you
13 very much, Mr. Dettman. I think that really
14 points out the issue in regards to the
15 standard that we have to evaluate the case on
16 and potentially a lack of evidence that we
17 have to be able to satisfy the special
18 exception standard.

19 Ms. Sorg, do you have any
20 additional deliberation discussions?

21 MEMBER SORG: Thank you, Madam
22 Chair. I don't have very much to add either.

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1 I agree almost entirely with Mr. Dettman and
2 Mr. May, and I think also with their leanings
3 with regard to the parking issue. I'm also
4 swayed in this case by the project's, you
5 know, close location to Metro and some of the
6 other things that we heard in testimony and
7 the earlier filings regarding, you know,
8 Zipcars and their availability and some of the
9 other things that the applicant is doing.

10 With regard to the roof
11 structures, although I agree with Mr. Dettman
12 that the applicant sort of skips over the
13 reasoning in the prehearing statement, I think
14 OP goes a little further in their report to
15 point out a little bit more clearly, although
16 not entirely, you know, that the reasoning
17 perhaps behind this is, you know, that the 14-
18 foot, four-inch screen wall that would make
19 the roof structure of a uniform height would
20 affect the surrounding area by being more
21 visible to more of the neighborhood. And this
22 case we're also granting an increased building

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1 height and things like that. So, I think you
2 can see that as somewhat coming under -- or I
3 can see that as somewhat coming under the
4 regulation here.

5 But that's all that I have to add.

6 BZA CHAIR MOLDENHAUER: I think
7 that the points that have been made are very
8 clear. In regards to the roof structures and
9 the last comments that were made, I think that
10 even though there were comments made by OP, I
11 don't think that the applicant adequately
12 addressed them during the hearing to satisfy
13 the requirements and the elements that we have
14 to evaluate that on.

15 In regards to the parking, I
16 think, you know, there was testimony that in
17 order to add additional parking it would cost
18 an additional \$60,000 per parking space and
19 that in order to go down a second level. And
20 as been already mentioned by other Board
21 Members, the fact that this is an all-
22 affordable housing project and that the site

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1 constraint creates challenges in order for
2 them try to meet all of their goals and
3 satisfy other zoning requirements that, you
4 know, I think that they have met the burden
5 there in regard in parking.

6 But I will definitely echo Mr.
7 May's comments in regards to DDoT's comments
8 in their report that they were really
9 unfounded in regards to the analysis that
10 we're looking for from that agency in order to
11 give us factual support rather than
12 potentially, you know, policy desires in order
13 for us to be able to use those reports to
14 really help us evaluate these standards.

15 That being said, I'd also just
16 like to add for the record that we have
17 reviewed some letters of support in our file,
18 including Exhibit No. 23 which comes from the
19 owner of 649 Park Road, Northwest, who
20 encourages his project and wishes to support
21 it.

22 We also have our Exhibit No. 31

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1 from Councilmember Graham which actually
2 specifically talks about the parking and
3 states that this limited zoning relief should
4 be supported and he's confident that 29
5 parking spaces that are being provided will
6 satisfy the needs generated by the project.

7 In addition to that, we have our
8 Exhibit No. 30 which is another letter of
9 support from the Executive Office of the
10 Mayor, Office of Deputy Mayor for Planning and
11 Economic Development, which again relays the
12 encouragement of the project and the support
13 that's being requested.

14 We then have the ANC letter which
15 has already been referenced in regards to some
16 of their concerns, but it is a letter of
17 recommendation with conditions that have been
18 addressed.

19 Then I believe we have one last
20 letter, which is our Exhibit No. 26 which is
21 a letter of concern in regards to the parking
22 issue and addresses those issues from the

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1 Prasada Condominium on 739 Newton Place. And
2 we heard obviously some of their concerns
3 about the parking, but I think from the record
4 that we have and the challenges of the
5 applicant I think that they have met the
6 burden in regards to that.

7 Is there any further deliberation
8 on this case?

9 (No audible response.)

10 BZA CHAIR MOLDENHAUER: Seeing
11 none, I'll see if there's a motion, or a
12 question.

13 COMMISSIONER MAY: Chairman, no,
14 no question. I'm prepared to make a motion.

15 BZA CHAIR MOLDENHAUER: Fabulous.
16 Thank you, Mr. May.

17 COMMISSIONER MAY: I would like to
18 move approval of the area variance to permit
19 an increase in building height from 70 to 73
20 feet, area variance pursuant to 2101.1 to
21 reduce the number of off-street parking spaces
22 from 42 spaces to 29, area variance pursuant

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1 to 2201.2 to reduce the size of the loading
2 berth from 55 feet to 30 feet and the size of
3 the loading platform from 200 feet to 100
4 feet, and to eliminate the requirement for one
5 delivery space, a special exception pursuant
6 to 1330.1(b) to permit construction of a
7 building on a lot 12,000 square feet or more
8 in area, a special exception pursuant to 1330
9 to permit two exceptions from the design
10 requirements for the Georgia Avenue Overlay
11 District. And then I would further include in
12 that motion disapproval of the special
13 exception pursuant to 41.11 to permit a roof
14 structure of varying heights.

15 BZA CHAIR MOLDENHAUER: A motion
16 has been made. Is there a second?

17 VICE CHAIRMAN DETTMAN: Second.

18 BZA CHAIR MOLDENHAUER: Motion's
19 been made and seconded. All those in favor
20 say aye? Aye.

21 VICE CHAIRMAN DETTMAN: Aye.

22 COMMISSIONER MAY: Aye.

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1 MEMBER SORG: Aye.

2 BZA CHAIR MOLDENHAUER: Mr. Moy?

3 MR. MOY: Yes, Madam Chair. Staff
4 would record the vote as four to zero to one.
5 This is on the motion of Mr. May for approval
6 of the requested variance and special
7 exception relief except for, or rather denial
8 of the special exception for the roof
9 structure requirements under subsection
10 411.11. In support of the motion, Mr.
11 Dettman. Seconded, rather. And also in
12 support of the motion, Ms. Moldenhauer and Ms.
13 Sorg. No other Board Members participating.
14 Again, the total vote is four to zero to one.
15 And staff would suggest that a full order be
16 written on this, Madam Chair.

17 BZA CHAIR MOLDENHAUER: Yes, thank
18 you very much. Whenever you're ready, we can
19 call the next case.

20 MR. MOY: That case would be
21 Application No. 18065 of Shomarka Keita,
22 pursuant to 11 DCMR 3104.1, for a special

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1 exception to allow a second story rear
2 addition to an existing one-family row
3 dwelling under section 223, not meeting the
4 lot occupancy (section 403), court (section
5 406), rear yard (section 404), and
6 nonconforming structure (subsection 2001.3),
7 requirements, in the R-4 District at premises
8 1925 2nd Street, Northwest, Square 3114, Lot
9 83.

10 On June 8th the Board completed
11 public testimony, closed the record and
12 scheduled its decision on July 13th. The
13 Board allowed the record to remain open for a
14 resolution or a letter from ANC 5C.

15 In the Board's case folder there
16 were three filings into the record. First,
17 there's no filing from ANC 5C. The three
18 preliminary filings, preliminary matter
19 filings I should say, the first two are
20 filings from Mr. Keita, Exhibits 53 and 54.
21 The third filing is a letter from party
22 opposition Kathleen Randle identified as

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1 Exhibit 55. This was filed into the record
2 yesterday, July 12th, Madam Chair. This
3 filing also includes a request from the party
4 opposition that the Board delay its decision.

5 The Board is to act on the
6 preliminary matters and then to act on the
7 merits of the section 223 special exception
8 relief, not meeting lot occupancy and open
9 court requirements as advertised in the public
10 notice.

11 And that complete staff's
12 briefing, Madam Chair.

13 BZA CHAIR MOLDENHAUER: Thank you
14 very much, Mr. Moy.

15 Then what we'll do is I'll first
16 address the preliminary matters of additional
17 evidence that has been presented that was
18 submitted after the record had been closed.
19 And what we have I believe two documents that
20 were added and then one potential motion. The
21 two letters from the applicant, one letter of
22 support and another letter, as we indicated at

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1 the end of the case the letters are not
2 admitted after the close of the hearing, and
3 so I would recommend not to permit those into
4 the record unless any Board Members have any
5 differing opinion.

6 (No audible response.)

7 BZA CHAIR MOLDENHAUER: Seeing
8 none, then we will not permit those letters
9 into the record.

10 The next document is a motion from
11 the party status individuals, Ms. Walker and
12 Ms. Randreed. And this is a motion requesting
13 that we postpone the decision based on an
14 investigation that is being conducted by
15 Councilmember Bowser. And in reviewing this
16 I think that there are some potential issues
17 that obviously the party status is bringing
18 up, however I don't believe that any of them
19 actually have bearing on the elements in which
20 we have to determine this case.

21 In addition to that, it would be
22 unduly prejudicial to postpone a case until

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1 the conclusion of an investigation when we
2 have no specific understanding of any time
3 frame in which that investigation would either
4 commence or be completed. Stating that, I
5 think that we will move forward in the
6 decision of this case and deny the motion from
7 party status Ms. Randreed and Ms. Walker to
8 postpone the decision.

9 That being said, I'll turn to Mr.
10 Dettman to start us off on the deliberation.

11 VICE CHAIRMAN DETTMAN: Thank you,
12 Madam Chair. I think this is a fairly
13 straightforward case, though it has
14 opposition, it has a party in opposition. We
15 have letters in the record expressing their
16 adverse views on the proposed addition. We
17 also have quite a few letters in the record
18 expressing support for the project and it is
19 a fairly small project. It's an application
20 for a two-story rear addition to an existing
21 row dwelling, which in a sense it's basically
22 replacing an existing one-story porch,

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1 utilizing the same footprint as the old porch,
2 but essentially putting on a second story.
3 The addition extends from the rear of the
4 original building a distance of about,
5 according to the plat, 5.17 feet and then it's
6 about 102 feet in width across the property.

7 During the hearing and in the
8 filings by the party opposition there was some
9 mention about whether or not this addition was
10 being constructed according to approved
11 permits and whether or not there's unclear
12 hands on behalf of the applicant. And, you
13 know, that is not an uncommon argument before
14 the BZA and what the BZA has typically
15 responded as saying is that the Board looks at
16 this very narrowly under section 223. And
17 whether or not it's being constructed
18 according to plans, whether or not it was
19 constructed prior to getting BZA approval,
20 that falls under the jurisdiction of another
21 entity.

22 And so, going into our narrow

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1 focus under 223, our zoning analysis, I'm in
2 support of the application. The areas of
3 relief that were advertised versus the areas
4 of relief that I think should be denoted in
5 our vote for the project I think is a little
6 bit different. The areas of relief under 223
7 should be lot occupancy. The proposed lot
8 occupancy is going to 68.3 percent, whereas a
9 matter of right 60 percent is permitted. And
10 under 223 the applicant can go to a maximum
11 lot occupancy of 70 percent. There is a need
12 for relief from section 406 for the open court
13 and then two other areas which are lot area
14 and lot width.

15 The requirement under the regs is
16 for 18-foot width and 1,800 square feet of lot
17 area. The subject property is approximately
18 15 foot in width and approximately 1,200
19 square feet in area. All of those four areas
20 of relief are subsumed under section 223.

21 So very quickly, with respect to
22 the impact of the proposed addition on the

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1 light and air available to neighboring
2 properties, I think that given the small size,
3 and especially the small distance that the
4 additional actually extends back towards the
5 rear of the property, I don't see any
6 potential for the addition having a
7 substantially adverse effect, which is the
8 standard that needs to be met, a substantially
9 adverse effect on neighboring properties.

10 Further, under 223 with respect to
11 the privacy of use and enjoyment of
12 neighboring properties, I think that the
13 placement of the windows on the second floor
14 will prevent any kind of undue impact on the
15 privacy of use and enjoyment of neighboring
16 properties and I think that standard has been
17 met.

18 And finally, as I've already
19 noted, under 223 an applicant can reach a
20 maximum lot occupancy of 70 percent. What's
21 being proposed is 68.3 percent.

22 So, I think in general the

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1 applicant has met its burden under 223 and I'm
2 in support of the special exception.

3 BZA CHAIR MOLDENHAUER: Thank you
4 very much, Mr. Dettman. I think that that was
5 a very thorough analysis of both the
6 applicant's application and the party status
7 individuals' opposition, and then also the
8 standards. I am definitely in agreement with
9 you and I think that this is a situation where
10 223 has a lower standard of requirement and
11 scrutiny that we have to give to these types
12 of cases and I think that based on that the
13 applicant has satisfied it.

14 Is there any further deliberation?

15 MEMBER SORG: No, I have nothing
16 further. I think both of you said it.

17 BZA CHAIR MOLDENHAUER: Thank you.
18 Then if there's no further deliberation, is
19 there a motion?

20 VICE CHAIRMAN DETTMAN: I move for
21 approval of Application No. 18065 for a
22 special exception under section 223 for four

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1 areas of relief; that being, open court, lot
2 width, lot area and rear yard at 1925 2nd
3 Street, Northwest.

4 BZA CHAIR MOLDENHAUER: A motion's
5 been made. Is there a second? I'll second.

6 Motion's been made and seconded.
7 All those in favor say aye? Aye.

8 VICE CHAIRMAN DETTMAN: Aye.

9 MEMBER SORG: Aye.

10 BZA CHAIR MOLDENHAUER: Mr. Moy,
11 if you could read back the vote?

12 MR. MOY: Yes, Madam Chair. Staff
13 would record the vote as three to zero to two.
14 This is on the motion of the Vice-Chair, Mr.
15 Dettman to approve the application for special
16 exception relief under 223, not meeting the
17 lot width, lot area, open court and rear yard.
18 Seconded the motion, the Chair, Ms.
19 Moldenhauer. In support of motion, Ms. Sorg.
20 We have Mr. Schlater not present, not voting
21 and no other Board Member participating.
22 Again, the final vote three to zero to two.

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1 BZA CHAIR MOLDENHAUER: Thank you
2 very much.

3 MR. MOY: The next and last case
4 for decision by the Board, Madam Chair, is the
5 Appellant's Motion for Reconsideration of
6 Appeal No. 17966-A of Stephen Bruce, pursuant
7 to Section 3126 of the Zoning Regulation. The
8 original application was pursuant to 11 DCMR
9 3100 and 3101, from a determination of the
10 Office of the Zoning Administrator, Department
11 of Consumer and Regulatory Affairs, to allow
12 the conversion of a nonconforming one-family
13 detached dwelling by adding an apartment
14 within the garage in the R-1-A District at
15 premises 2709 31st Street, Northwest, Square
16 2125, Lot 815.

17 On June 22nd, 2010, the Board
18 convened its special public meeting. After
19 deliberation, the Board postponed its decision
20 and rescheduled it to July 13th.

21 Other than that, the Board is to
22 act on the merits of the motion pursuant to

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1 Section 3126.6. And that completes the
2 staff's briefing, Madam Chair.

3 BZA CHAIR MOLDENHAUER: Thank you
4 very much.

5 I believe the preliminary issue
6 that we have also here is that the Motion for
7 Reconsideration was late and I believe that
8 the Board is in agreement that we'll waive
9 that requirement seeing that the individual
10 has provided sufficient evidence to show good
11 cause in absence of prejudice to the parties
12 seeing that the mail appears to have been
13 delivered to the wrong address by having the
14 last two digits of his address reversed.

15 That being said, we can now move
16 onto the merits of the case. I believe before
17 we get started I'd like to have each Board
18 Member who's read the record in this case and
19 will be participating in this decision
20 identify that.

21 VICE CHAIRMAN DETTMAN: Madam
22 Chair, as required under Section 3126.8,

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1 though I didn't participate in the original
2 hearing, I have read the record and reviewed
3 the transcript for this case.

4 BZA CHAIR MOLDENHAUER: Thank you.

5 MEMBER SORG: Thank you, Madam
6 Chair. I also have read the record and can
7 participate in this case.

8 BZA CHAIR MOLDENHAUER: Thank you
9 very much. And I appreciate both of you
10 reading the record and allowing us to go
11 forward on the decision.

12 This case is before us for a
13 Motion for Reconsideration and there has been
14 an argument by the appellant in regards to us
15 reviewing additional permits that were issued
16 such as the March 18th permit and to
17 reconsider our prior decision.

18 In this case I don't believe that
19 the applicant has met its burden in regards to
20 providing us any new additional evidence in
21 which we would have new facts to consider in
22 the prior case. I think that the March 18th

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1 permit, while potentially providing new
2 information, doesn't really provide us with
3 any new evidence because it's the same type of
4 situations we had in the initial case seeing
5 that it may have been a permit issued at a
6 later date but it was not the permit at issue
7 and which gave rise to the claims in which the
8 appellant was challenging the work.

9 And, you know, as stated in the
10 prior decision, we have to look to the permit
11 which gave notice to the neighbors of
12 potential zoning issues rather than subsequent
13 permits which may -- factually in this
14 scenario may be a subsequent permit and other
15 cases may provide substantive issues which
16 would give rise. But in this situation,
17 factually subsequent permits did not give rise
18 to new zoning issues and were simply
19 ministerial changes in the design or in the
20 work that was being performed. And thus, it
21 would not be new evidence for us to reconsider
22 this case.

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1 That is my brief analysis and I'll
2 open up the floor for further deliberation.

3 VICE CHAIRMAN DETTMAN: Madam
4 Chair, I agree with your analysis. I think
5 that given the standards for rehearing or
6 reconsideration I don't think that the
7 appellant has submitted any new information or
8 adequately showed that the Board erred in its
9 original decision.

10 ZC CHAIR HOOD: Madam Chair, I
11 would just echo what I've heard from you and
12 Board Member Dettman. I don't think anything
13 new is here from our original decision other
14 than the issuance of a new drawing and I don't
15 think that changes the case and the facts in
16 which we made our decision upon.

17 BZA CHAIR MOLDENHAUER: Thank you
18 very much. Any further deliberation?

19 MEMBER SORG: I have nothing
20 further, I also agree with the analysis that
21 you've made.

22 BZA CHAIR MOLDENHAUER: Okay.

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1 Thank you. Then what I'll do is I'll put
2 forth a motion to deny the motion for
3 reconsideration. Is there a second?

4 ZC CHAIR HOOD: Second.

5 BZA CHAIR MOLDENHAUER: Motion's
6 been made and seconded. All those in favor
7 say aye? Aye.

8 VICE CHAIRMAN DETTMAN: Aye.

9 COMMISSIONER MAY: Aye.

10 MEMBER SORG: Aye.

11 ZC CHAIR HOOD: Aye.

12 MR. MOY: Staff would record the
13 vote as four to zero to one. This is on the
14 motion of the Chair, Ms. Moldenhauer, to deny
15 the Motion for Reconsideration. Seconded by
16 Mr. Hood, Chair of the Zoning Commission.
17 Also in support of the motion, Mr. Dettman and
18 Ms. Sorg. And we have no other Board Member
19 participating. So again, the final vote is
20 four to zero to one.

21 BZA CHAIR MOLDENHAUER: Thank you
22 very much, Mr. Moy. I believe that concludes

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1 our public meeting?

2 MR. MOY: Yes.

3 BZA CHAIR MOLDENHAUER: We'll then
4 enter into the morning hearing.

5 (Whereupon, the meeting was
6 adjourned at 10:29 a.m.)

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