

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 17, 2012

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:37 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
NICOLE SORG, Vice-Chairperson  
RASHIDA MACMURRAY, Board Member  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN

KAREN THOMAS

MATT JESICK

ARTHUR JACKSON

PAUL GOLDSTEIN

The transcript constitutes the minutes from the Public Hearing held on April 17, 2012.

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

9:37 a.m.

CHAIRPERSON JORDAN: Will the hearing please come to order.

Good morning, ladies and gentlemen.

We are located in the Jerrily R. Kress Memorial Hearing Room, at 441 4th Street, N.W. Today's date is April 17, 2012, for a public hearing of the Board of Zoning Adjustment for the District of Columbia.

My name is Lloyd Jordan, Chairperson. Joining me today to my left is Vice Chair Nicole Sorg. To my right, Board Member Rashida MacMurray. To her right is Jeffrey Hinkle, Board Member, and to the left of the Vice Chairperson is Michael Turnbull, representative of the Zoning Commission.

Please be advised that this proceeding is being recorded by a court reporter, and is also webcast live. Accordingly, we must ask that you refrain from any disruptive noises or actions in the hearing

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1 room.

2 The Board's hearing procedures and  
3 how we will process applications can be found  
4 on the table in the back, by the back door.  
5 And so, let's begin today's hearing agenda.

6 All individuals wishing to testify  
7 today please raise and take the oath. Mr.  
8 Secretary, would you please administer the oath?

9 (Whereupon, witnesses sworn.)

10 CHAIRPERSON JORDAN: Thank you, Mr.  
11 Secretary.

12 If you will call our first case on  
13 our agenda, please.

14 SECRETARY MOY: Good morning, Mr.  
15 Chairman and Members of the Board.

16 The first of three cases before the  
17 Board in its morning session, first being  
18 Application No. 18337. This is the application  
19 of Casey Torgusson and Jason Cornelius, pursuant  
20 to 11 DCMR 3104.1, for a special exception to  
21 allow a rear addition to an existing one-family  
22 row dwelling under Section 223, not meeting the

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1 lot occupancy section 403 requirements in the  
2 R-4 District. This is at premises 122 Rhode  
3 Island Avenue, N.W., property located in Square  
4 3109, Lot 35.

5 VICE CHAIRPERSON SORG: You need to  
6 be on the mic, sir.

7 CHAIRPERSON JORDAN: Yes, you have  
8 to push the little button. There, yes.

9 And, before you begin, would you  
10 state your name, both of your names?

11 VICE CHAIRPERSON SORG: It's sort  
12 of a tap, and then it goes bright green, and  
13 then you are good.

14 CHAIRPERSON JORDAN: It's green.  
15 Well, pull it a little closer to your mouth,  
16 maybe that will help. The mic should move some  
17 for you.

18 All right, and would you state your  
19 name, please?

20 MR. CORNELIUS: Jason Cornelius.

21 CHAIRPERSON JORDAN: And, your  
22 name?

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MR. TORGUSSON: Casey Torgusson.

CHAIRPERSON JORDAN: Jorgusson?

MR. TORGUSSON: Torgusson.

CHAIRPERSON JORDAN: I think the record in this matter is pretty clear, and I'm going to check with the Board and see if there's any issues that they may have seen, any additional information that they may need.

VICE CHAIRPERSON SORG: Mr. Chairman, I think, do we need to ask the applicant to amend their application?

CHAIRPERSON JORDAN: No, we don't necessarily need to do that.

VICE CHAIRPERSON SORG: Oh, okay.

CHAIRPERSON JORDAN: We can do it on our own to add the additional relief that's necessary.

VICE CHAIRPERSON SORG: Okay.

CHAIRPERSON JORDAN: The Board does not believe there's any questions that the Board has, since the application is pretty clear and that the record is pretty full.

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1                   You have the right to continue if  
2                   you want to put a hearing on, or we can go ahead  
3                   and just make a decision based upon what's  
4                   already been submitted.

5                   MR. TORGUSSON:   Okay.

6                   CHAIRPERSON     JORDAN:           And,  
7                   generally, if we have some questions and things  
8                   are looking rocky, we would have you do a  
9                   presentation.

10                  MR. TORGUSSON:   Right, yes.

11                  CHAIRPERSON JORDAN:   But, you have  
12                  a right to provide any additional evidence if  
13                  you want.

14                  MR. CORNELIUS:   Well, I think that,  
15                  you know, we've presented all of our facts,  
16                  and, you know, we hope that you find in favor  
17                  for us. We really enjoy our residency at 122,  
18                  and we hope we can make this house a little more  
19                  liveable for us.

20                  CHAIRPERSON JORDAN:   What the Vice  
21                  Chair was mentioning, and we can simply -- we  
22                  can have you do it orally, but the Board has

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1 the power in a relief to grant the relief that's  
2 necessary for this to be completely done, is  
3 that you would also, based upon our relief, would  
4 need relief from Section 401, in that this  
5 property is only 1,280 square feet, and the  
6 minimum is 1,800 in the particular zone.

7 MR. CORNELIUS: Correct.

8 CHAIRPERSON JORDAN: So, I guess we  
9 accept -- so you want us to amend that for you,  
10 you are asking the Board to amend that for you,  
11 are you not?

12 MR. CORNELIUS: Yes, thank you.

13 CHAIRPERSON JORDAN: So, we accept  
14 that.

15 Based upon the record, it's my  
16 thought that the applicant has satisfied the  
17 burden of proving the elements that are  
18 necessary for relief established under 3104.1  
19 for special exception under 401 and 402.

20 No parties appear at this public  
21 hearing in opposition to this application, I  
22 don't believe. Anybody here in opposition?

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1 I didn't see any.

2 Accordingly, a decision of the Board  
3 to grant this application would not be adverse,  
4 I don't believe, to any party. There's nothing  
5 in the record that indicates that anyone had  
6 any opposition. We have letters of support from  
7 both the Office of Planning and the ANC, which  
8 both will be given great weight since they meet  
9 the requirements of that.

10 The record indicates that there's  
11 no substantially adverse effect upon the  
12 surrounding properties. There's no impact on  
13 the light and air. There's no visual intrusion  
14 upon the character of the property. The  
15 graphical representations as submitted by the  
16 applicant fairly, in my estimation, show the  
17 relationship of what the addition would be.  
18 The lot occupancy does not violate the  
19 requirements that it -- by the percentage  
20 required by the Regulations, and I would  
21 conclude that the requested relief can be  
22 granted as being in harmony with the general

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1 purpose and the intent of the Zoning Regulations  
2 and map, and that the Board further concludes  
3 that granting this relief will not tend to  
4 adversely affect the surrounding neighborhood.

5 And also, I would believe that this  
6 application, since there's no opposition, would  
7 be prime and ripe for waiver of Section -- waiver  
8 of the requirements at 3125, so that we can do  
9 this in a summary order, without providing  
10 findings of facts and conclusions of law, and  
11 I would so move that.

12 VICE CHAIRPERSON SORG: I would  
13 second that motion.

14 CHAIRPERSON JORDAN: Motion made  
15 and seconded that we approve the application,  
16 with the additional relief of Section 401.

17 Ready for the question?

18 All those in favor signify by saying  
19 aye?

20 (Ayes.)

21 CHAIRPERSON JORDAN: Those  
22 opposed, nay?

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Motion carries. Mr. Secretary?

MR. MARINA: Yes, sir. Staff would record the vote as 5:0:0. This is on the motion of Chairman Jordan to approve the application for special exception relief under Section 223, not meeting the lot occupancy requirements under Section 403, as well as not meeting the lot area requirements under 401.1. Seconding the motion Vice Chair Sorg. Also in support of the motion Mr. Turnbull, Ms. MacMurray, and Mr. Hinkle.

So again, the final vote is 5:0:0.

MR. CORNELIUS: Thank you.

SECRETARY MOY: Thank you.

The next application before the Board is Application No. 18335. This is the application of the Washington Ethical Society, pursuant to 11 DCMR 3104.1, for a special exception to allow a child development center, 40 children, 14 staff, under Section 205, in the R-1-A District at premises 7750 16th Street, N.W., property located at Square 2745F, F as in fox trot, Lot 81.

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MS. PARCELLI: Good morning.

CHAIRPERSON JORDAN: Good morning.

Would you please introduce yourself for us,  
please?

MS. PARCELLI: Yes. I'm Christine  
Parcelli. I'm the Administrator at Washington  
Ethical Society.

MR. TOMER: And, I'm Jonathan  
Tomer. I'm a Member of the Board of Trustees  
of the Washington Ethical Society.

CHAIRPERSON JORDAN: Is it Domer?

MR. TOMER: Tomer, T-O-M-E-R.

CHAIRPERSON JORDAN: Again, I  
believe this is another file that's pretty full.

Do the Board Members need any other additional  
information from them?

I just have one question that,  
actually, goes to the Office of Planning. Who  
is the Office of Planning on this file?

SECRETARY MOY: My understanding is  
Steven Cochran, unless Stephen Mordfin would  
like to stand in for him.

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1 CHAIRPERSON JORDAN: And, let me  
2 ask, while we are having Planning come up. For  
3 the record, to the applicant, is the applicant  
4 going to stand by the neighborhood agreement  
5 that's already been signed and executed, and  
6 has been placed before?

7 MS. PARCELLI: Yes, absolutely.

8 CHAIRPERSON JORDAN: In this  
9 particular matter, OP -- there's been a request  
10 by the ANC, and then by the applicant, that there  
11 is no -- that we maximize a time limit for  
12 extension for the approval of this child center.

13 OP has recommended eight years. Are you  
14 familiar with maybe why OP is asking for eight  
15 years?

16 OP STAFF MORDPHIN: In this case,  
17 I think this is a -- because it's usually for  
18 a continuation, usually we recommend additional  
19 years when there are issues related to the  
20 operation. So, we want to make sure that the  
21 community feels like they have a way to come  
22 back to the Board, because things weren't --

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1 aren't perfect, you know.

2 Sometimes if an operator has proved  
3 himself to be exemplary, we don't recommend a  
4 time period, because, you know, they work well  
5 with the community.

6 So, it just gives them an out for  
7 -- in case any of the changes that are proposed  
8 really don't work out as we foresee it.

9 CHAIRPERSON JORDAN: Does anyone on  
10 the Board have any issues with that, accepting  
11 the OP's recommendation for eight years?

12 MEMBER HINKLE: Yes, I just had a  
13 question. Is eight years kind of a standard  
14 set, or is there a set number of years that OP  
15 typically recommends? I'm just not quite sure  
16 where the eight years came from.

17 OP STAFF MORDPHIN: We don't have  
18 a set number of years. Sometimes it depends  
19 on the amount of the change that's proposed,  
20 and sometimes if there is some friction with  
21 the community we might recommend something less.

22 So, we look at each one on a

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1 case-by-case basis, to determine what would be  
2 an appropriate amount of time.

3 MEMBER HINKLE: Great, thank you.

4 VICE CHAIRPERSON SORG: I think to  
5 follow up, just to comment on Mr. Hinkle's  
6 question, I think this is the first request for  
7 the continuation, subsequent to the special  
8 exception which was made in 2009. Is that  
9 correct?

10 MS. PARCELLI: 2008.

11 VICE CHAIRPERSON SORG: Or, 2008.

12 And so, this is the first time that  
13 this applicant is back before the Board to  
14 continue.

15 So, I think the precedent that this  
16 Board, to my recollection, has set is, you know,  
17 when we've seen these similar applications of  
18 a five-year term, and so, personally, you know,  
19 I personally would be in favor of a five-year  
20 term.

21 MS. PARCELLI: We did have zoning  
22 prior to 2008. We went through a renovation,

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1 so there was a lapse in that. We have a long  
2 history of being zoned for child care.

3 VICE CHAIRPERSON SORG: No, I mean,  
4 so how long have you -- just remind me, I know  
5 it's in our file -- how long have you been  
6 operating in this location?

7 MS. PARCELLI: I don't have the date  
8 for a child care center, but we had a high school  
9 there for many years, and child care, oh, I'm  
10 going to say going back at least ten years or  
11 more.

12 VICE CHAIRPERSON SORG: Okay.

13 MS. PARCELLI: We've been there for  
14 42 years, and we've always had a school of some  
15 sort.

16 The zoning lapsed when we were doing  
17 the renovation, and could not have it at that  
18 time.

19 VICE CHAIRPERSON SORG: Oh, okay,  
20 so then if it was just for a renovation, then  
21 I'm fine with the eight-year term.

22 ZC MEMBER TURNBULL: Mr. Chair, I

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1 see a Certificate of Occupancy that goes back  
2 to '93.

3 CHAIRPERSON JORDAN: Yes, it's been  
4 a while, yes.

5 ZC MEMBER TURNBULL: Yes.

6 CHAIRPERSON JORDAN: Very good.

7 MEMBER HINKLE: And, Mr. Chair, I  
8 just wanted to add, I think we have a full record  
9 of support for this project, and I certainly  
10 would be in support of eight years.

11 CHAIRPERSON JORDAN: Yes. In  
12 fact, I think the initial term had some  
13 limitations, and, subsequently, because of, I  
14 guess, the way you were operating, the ANC is  
15 asking for the max as much as we can give you.  
16 So, we accept that.

17 And again, we believe that the  
18 record is pretty full in this matter. So,  
19 unless you want to present something, you don't  
20 have to, let me then ask, is there anyone in  
21 the audience in opposition to this application  
22 for special exception?

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1                   Seeing none, I think we are probably  
2 fine again for this to move forward, based upon  
3 the record. The applicant has satisfied the  
4 burden of providing the elements that are  
5 necessary to establish a special exception under  
6 Section 205, as requested.

7                   No parties appearing at this hearing  
8 appear to be in opposition to this application,  
9 and, accordingly, this matter would not be --  
10 would be ripe for a summary order by the Board,  
11 and, therefore, waiving the provisions of  
12 3125.3.

13                   The application clearly shows that  
14 the property meets all the applicable codes and  
15 licensing requirements, that there's no  
16 objectable traffic and unsafe conditions for  
17 picking up or dropping off persons, that there's  
18 sufficient off-street parking spaces to meet  
19 the needs of the teachers and other employees  
20 and visitors. There's no objectable playground  
21 areas, both on the premises or off the premises,  
22 that will impact nearby neighborhoods causing

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1 noise, or other activity, or visual intrusion.

2 There's no other centers, based upon this  
3 record, that's within 1,000 feet, as has not  
4 been noted. And, the application in the file  
5 indicates the application has been sent to all  
6 the applicable agencies as required.

7 The file also contains support from  
8 the Office of the State Superintendent of  
9 Education, as required, and the ANC has voted  
10 properly to support this application, which  
11 great weight would be given to what the ANCs  
12 request, as well as great weight being given  
13 to the Office of Planning, who set forth  
14 conditions which they've discussed with the  
15 applicant, and that the Board would adopt in  
16 this order the conditions as set forth in the  
17 OP report.

18 With that, I would move the approval  
19 of this application.

20 ZC MEMBER TURNBULL: Second.

21 CHAIRPERSON JORDAN: Motion made  
22 and seconded that the application be approved,

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1 with the conditions as stated in the OP\_ report.

2 Any questions?

3 All those in favor signify by saying  
4 aye.

5 (Ayes.)

6 CHAIRPERSON JORDAN: Those opposed  
7 nay?

8 The motion carries.

9 SECRETARY MOY: Mr. Chairman,  
10 before I give the final vote for the record,  
11 what was the motion in terms of the term limit,  
12 number of years?

13 CHAIRPERSON JORDAN: The eight  
14 years, we took the recommendations of OP in this  
15 matter.

16 SECRETARY MOY: Very good, that's  
17 for my edification.

18 So, the staff would record the vote  
19 as 5:0:0, this on the motion of Chairman Jordan  
20 to approve the application for special exception  
21 relief under Section 205, with conditions as  
22 stated in the Office of Planning report, and

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1 this is for a period of an eight-year term.

2 Seconding the motion Mr. Turnbull.

3 Also in support of the motion, Ms. Vice Chair  
4 Sorg, Ms. MacMurray, and Mr. Hinkle.

5 Again, the final vote 5:0:0, summary  
6 order.

7 CHAIRPERSON JORDAN: Thank you, Mr.  
8 Secretary.

9 SECRETARY MOY: Thank you, sir.

10 The third and final application  
11 before the Board in its morning session is  
12 Application No. 18336. This is the application  
13 of Grace Evangelical Lutheran Church. This is  
14 in care of Amazing Life Games Preschool,  
15 pursuant to 11 DCMR 3104.1 for a special  
16 exception to allow a child development center.  
17 This is for 35 children and five staff, under  
18 Section 205, in the R-1-B District, at premises  
19 4300 16th Street, N.W., property located at  
20 Square 2646, Lot 807.

21 Mr. Chairman, just for the record  
22 for the Board, in the case filing there appears

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1 to not be an affidavit of posting, number one.

2 And, number two, I think the applicant has not  
3 taken the oath for the morning.

4 CHAIRPERSON JORDAN: Okay. Well,  
5 let's first take the oath, if we may.

6 (Whereupon, witness sworn.)

7 MS. MISTRETT: Thank you.

8 CHAIRPERSON JORDAN: And, we also  
9 don't have an ANC letter, other than the  
10 Commissioner.

11 Are there letters in support in this  
12 file?

13 Let me ask the applicant. Has --  
14 excuse me, what's your name, please?

15 MS. MISTRETT: My name is Marcie  
16 Mistrett. I apologize for being late.

17 CHAIRPERSON JORDAN: Would you say  
18 your name again?

19 MS. MISTRETT: Marcie Mistrett.  
20 I'm the Director of the preschool. Do you want  
21 me to spell?

22 CHAIRPERSON JORDAN: No, I'm good,

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1 thank you.

2 MS. MISTRETT: Okay.

3 CHAIRPERSON JORDAN: Was the notice  
4 posted regarding this application?

5 MS. MISTRETT: The notice was  
6 posted, and I have an email. I've been in  
7 correspondence with Gale Black, and I have an  
8 email from her saying she would write a letter  
9 of support, but she didn't get it to me by today.

10 CHAIRPERSON JORDAN: Gale Black is?

11 MS. MISTRETT: Is the ANC  
12 Commissioner. She's 4A08.

13 CHAIRPERSON JORDAN: We have a  
14 letter from an ANC Commissioner.

15 MS. MISTRETT: Okay.

16 CHAIRPERSON JORDAN: But, I don't  
17 know if it was submitted for review.

18 She indicates that it has been  
19 submitted to the ANC, but they said that it was  
20 not necessary, because it was a no brainer for  
21 them, or something. They weren't going to take  
22 an action on it.

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1                   However, I need to know, this was  
2 properly posted on the property, the notice for  
3 this relief that you are requesting.

4                   MS. MISTRETT: I did not know I had  
5 to do that. I did go knock on neighbors' doors  
6 and let them know it was coming, that zoning  
7 was coming. I talked to -- there's only two  
8 neighbors that buttress the school. I did not  
9 know that I needed to post an affidavit on the  
10 school door.

11                   VICE CHAIRPERSON SORG: So, the  
12 thing is, you know, we have Zoning requirements  
13 which, unfortunately, you didn't know and  
14 weren't able -- didn't fulfill for posting.

15                   MS. MISTRETT: Okay.

16                   VICE CHAIRPERSON SORG: And, you  
17 would have received instructions to, you know,  
18 pick up posters from this office that you would  
19 put on your property, at a minimum of, I think,  
20 14 days before the hearing, so that the public  
21 could be knowledgeable about the request that  
22 you are making.

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1           Additionally, there are other ways  
2           that the public is notified about these  
3           hearings, mailings that go out from our office,  
4           the Office of Zoning, to people in the radius  
5           of 200 feet.

6           MS. MISTRETT: Right.

7           VICE CHAIRPERSON SORG: That would  
8           have happened. Also, a presentation and being  
9           on the agenda at the ANC, is another way that  
10          -- because they post their meetings and their  
11          agendas -- another way that the public can get  
12          involved.

13          Unfortunately, you kind of missed  
14          on the two things that, of the three  
15          requirements, that help us know that the public  
16          has been duly informed of the request that's  
17          being made.

18          MS. MISTRETT: Okay. I did request  
19          from the ANC to get on their hearing, but they  
20          didn't -- I requested that when I submitted,  
21          but they said they have had some issues, and  
22          they are getting backed up, and that because

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1 there was no complaints against us, that we  
2 weren't going to be able to have it.

3 So, I mean, I'm happy to come back.

4 CHAIRPERSON JORDAN: Let's do that.

5 Mr. Moy, let's move this to another date, and  
6 please be sure to post, and then file the  
7 affidavit with the office that it was posted.

8 MS. MISTRETT: Okay, where --

9 VICE CHAIRPERSON SORG: If you go  
10 to the front, they will be able to give you  
11 instructions on everything that you need to do  
12 to make sure that, you know, you are fulfilling  
13 the requirements correctly.

14 MS. MISTRETT: Okay.

15 VICE CHAIRPERSON SORG: And, with  
16 regard to the ANC, just as a note, it's the  
17 responsibility of the applicant to, you know,  
18 try to work with and encourage the ANC. And,  
19 in my opinion, in this case they gave you some  
20 wrong information, because it is always helpful,  
21 and we always look for ANC reports in our cases  
22 for support.

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1           And so, it would be up to you, if  
2           you wanted to, within this time between now and  
3           when the Chairman will set your next -- your  
4           hearing after fulfilling the post-hearing  
5           requirements, that it is important to note, it's  
6           a good idea to try and encourage. Obviously,  
7           you can't force the ANC to do anything, but we  
8           like to see that something has been presented  
9           and so forth.

10                   MS. MISTRETT: Okay.

11                   CHAIRPERSON JORDAN: Yes, if you  
12           can send them a letter, then we would have it  
13           for our files additionally.

14                   MS. MISTRETT: Okay.

15                   CHAIRPERSON JORDAN: Send a letter,  
16           then we would have it.

17                   Yes?

18                   OP STAFF JACKSON: Arthur Jackson,  
19           Office of Planning. Just a point of  
20           clarification.

21                   What day was the ANC meeting? Is  
22           it the second day of the month, or second

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1 Wednesday?

2 MS. MISTRETT: It was last  
3 Thursday, I think.

4 OP STAFF JACKSON: So, it was the  
5 fourth Thursday of the month? Would that have  
6 been the fourth Thursday?

7 MS. MISTRETT: That would have been  
8 the second.

9 OP STAFF JACKSON: Oh, this month.

10 SECRETARY MOY: Yes.

11 OP STAFF JACKSON: Oh, okay, second  
12 Thursday. So, in that case, the schedule would  
13 need to be such that she can go to the next  
14 meeting, which would be the second Thursday of  
15 next month.

16 MS. MISTRETT: Correct.

17 OP STAFF JACKSON: Okay. I just  
18 wanted to mention that.

19 MS. MISTRETT: As long as I can get  
20 on the hearing, as long as I can be scheduled  
21 then.

22 OP STAFF JACKSON: You are just

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1 requesting to get on the agenda.

2 MS. MISTRETT: Okay.

3 OP STAFF JACKSON: But, and if you  
4 can't, if they don't let you on the agenda, then  
5 the issue is addressed. But, we don't want to  
6 schedule -- I'm sure the Board doesn't want to  
7 schedule a hearing before you had an opportunity  
8 to go before the ANC.

9 MS. MISTRETT: Yes.

10 SECRETARY MOY: Mr. Chairman, on  
11 the schedule then, we have a public meeting on  
12 the 15th, so I would suggest either rescheduling  
13 for the afternoon of May 22nd, or, whoa, then  
14 we jump into June 5th.

15 CHAIRPERSON JORDAN: May 22nd.

16 MS. MISTRETT: What day is the 22nd?

17 CHAIRPERSON JORDAN: It's always a  
18 Tuesday.

19 MS. MISTRETT: Okay.

20 CHAIRPERSON JORDAN: And so, I  
21 would today, tomorrow, be sure to get that  
22 information out to the ANC. And also, you have

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1 the Commissioner that already wrote a letter  
2 in support, to ask her to see if she can move  
3 to get on the agenda.

4 MS. MISTRETT: Yes.

5 CHAIRPERSON JORDAN: Okay.

6 MS. MISTRETT: So, I just need that,  
7 and then to go to Zoning and figure out the  
8 requirements for the --

9 CHAIRPERSON JORDAN: Right across  
10 the hall, just ask them.

11 MS. MISTRETT: Okay. And, you said  
12 in the afternoon, because I didn't --

13 CHAIRPERSON JORDAN: Afternoon on  
14 the 22nd, I believe is the date.

15 MS. MISTRETT: And, what time is  
16 that?

17 CHAIRPERSON JORDAN: Our afternoon  
18 docket starts at 1:00.

19 MS. MISTRETT: 1:00, thank you.

20 ZC MEMBER TURNBULL: This case  
21 should go fairly easily.

22 CHAIRPERSON JORDAN: Yes.

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1                   ZC MEMBER TURNBULL: But, we just  
2 need some back-up information for the file.

3                   MS. MISTRETT: That's fine. It's  
4 the first time I've done this, so I appreciate  
5 your patience.

6                   CHAIRPERSON JORDAN: Before you  
7 leave, I just want you to answer one question.  
8 There's just a little bit of a question.

9                   You are only asking for 35 children  
10 and five staff people. You are not asking for  
11 70, because you have the day care and then you  
12 have the after school.

13                  MS. MISTRETT: Yes. I, actually,  
14 it's the same students.

15                  CHAIRPERSON JORDAN: So, it's the  
16 same 35.

17                  MS. MISTRETT: Yes.

18                  CHAIRPERSON JORDAN: Okay. That  
19 sets our record straight.

20                  MS. MISTRETT: Yes.

21                  CHAIRPERSON JORDAN: Thank you so  
22 much.

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MS. MISTRETT: And, we only have four children in after care right now, so that's just kind of a if we grow thing.

CHAIRPERSON JORDAN: Okay, thank you.

MS. MISTRETT: Thank you.

CHAIRPERSON JORDAN: We'll stand in recess until this afternoon at 1:00.

(Whereupon, the hearing was recessed at 10:04 a.m., to reconvene at 1:00 p.m., this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:10 p.m.

CHAIRPERSON JORDAN: Will the hearing please come to order.

Good afternoon, ladies and gentlemen. We are located in the Jerry R. Kress Memorial Hearing Room at 441 4th Street, N.W.

Today's date is April 17, 2012. We are here for the public hearing on the Board of Zoning Adjustment of the District of Columbia.

My name is Lloyd Jordan, Chairperson. Joining me today is Vice Chairman Nicole Sorg to my left. To the right of me is Rashida MacMurray, Board Member. To her right is Jeffrey Hinkle, Board Member. And, to the left of the Vice Chairperson is Michael Turnbull, representing the Zoning Commission.

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 disruptive noise or actions in the hearing  
5 room.

6 The Board's hearing procedures, and  
7 how we will process applications, can be found  
8 on the table by the back door.

9 We will now begin this afternoon's  
10 docket, and I don't see the Secretary, but let's  
11 come back -- oh, as a preliminary matter, I want  
12 to ask if the parties on the Roane-Worsley LLC  
13 matter, Case No. 18324, is here? Oh, there he  
14 is.

15 Anyone on the last case, 18324, the  
16 Roane-Worsley LLC matter. Okay, we'll visit  
17 that one more time, Mr. Secretary, after we  
18 finish the docket.

19 So, all individuals wishing to  
20 testify today, would you please stand and take  
21 the oath, and the Secretary will administer the  
22 oath.

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(Whereupon, witnesses sworn.)

SECRETARY MOY: You may consider yourselves under oath.

CHAIRPERSON JORDAN: Thank you.

If we have any preliminary matters, we'll handle them with the case.

SECRETARY MOY: Yes, sir. yes, sir.

CHAIRPERSON JORDAN: If you will call the first case.

SECRETARY MOY: Good afternoon, Mr. Chairman, Members of the Board. The first application before the BZA is Application No. 18338. This is the application of Petit Scholars Early Learning Center, pursuant to 11 DCMR 3104.1. This is for a special exception for a reduction in the number of required off-street parking spaces under Subsection 2001.1, serving a child development center, 35 children and seven staff, under Subsection 2108.1, in the C-1 District, at premises 2940 12th Street, N.E. Property located at Square

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1 3875, Lot 90.

2 CHAIRPERSON JORDAN: Will the  
3 parties please come to the table, please, and  
4 turn the microphone on and identify yourself.

5 MS. HAM: I am LaShada Ham. I am  
6 the owner of Petit Scholars Early Learning  
7 Center.

8 CHAIRPERSON JORDAN: Your last name  
9 again?

10 MS. HAM: H-A-M.

11 CHAIRPERSON JORDAN: Okay.

12 You have to turn the microphone on.  
13 Push the little button. You'll see a button  
14 and the light will come on. Do you see a green  
15 light? Okay, now you can begin.

16 No, you still need to -- the green  
17 light is on? Your button is on. Just tap it.  
18 Just tap it, don't push it hard, just tap it.

19 MS. JEFFERSON: There.

20 CHAIRPERSON JORDAN: Okay, good.

21 MS. JEFFERSON: My name is Rebecca  
22 Jefferson, and I own the property up to this

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1 LLC, next door to the business that they are  
2 supposed to have zoned.

3 CHAIRPERSON JORDAN: The property  
4 next door. Are you here as a witness, are you  
5 here for support, or in opposition?

6 MS. JEFFERSON: I'm kind of both,  
7 because I have a concern, because I have -- I  
8 was supposed to be opening a child care next  
9 door to her, because this was to open on my  
10 property, but she was afforded to get the other  
11 one.

12 But, my question is, if she will be  
13 granted what she's requesting, what will happen  
14 then when I open mine?

15 CHAIRPERSON JORDAN: Well, it's not  
16 -- that issue is not before us to address, and  
17 we can't give that type of advice.

18 And, I'm trying to understand. You  
19 are saying that --

20 MS. JEFFERSON: What effect does it  
21 make, my question.

22 CHAIRPERSON JORDAN: Well, I think

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1 the Regulations are real clear in regards to  
2 another child care center within a certain  
3 distance of feet, but I cannot provide you that  
4 type of advice or discussion with you  
5 proactively like that.

6 So, it's my understanding from what  
7 you said, is that you are going to -- it's your  
8 intent to open up another child care center.

9 MS. JEFFERSON: That was before she  
10 came in, but --

11 CHAIRPERSON JORDAN: That would be  
12 within a 1,000 feet of this child care center,  
13 is that what I'm understanding?

14 MS. JEFFERSON: It's next door.

15 CHAIRPERSON JORDAN: Next door is  
16 within 1,000 feet.

17 MS. JEFFERSON: I suppose so.

18 CHAIRPERSON JORDAN: Yes. Okay.

19 But, that's not before us, and we  
20 can't rule on that. It doesn't mean that one  
21 way or the other that you will get it, or not  
22 get it. It would have to stand on its own

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1 merits.

2 Do you follow me? Do you understand  
3 what I mean?

4 MS. JEFFERSON: Maybe, kind of.

5 CHAIRPERSON JORDAN: Okay. So --

6 MS. JEFFERSON: Okay. My question  
7 is like this. Because this is a business area,  
8 and I would like her to have her own, too, but  
9 what will happen because we don't have parking  
10 space on that area, so, therefore, how the  
11 client, you know, depart without parking on my  
12 -- in front of my building.

13 See, I have a full unit there. I've  
14 been there since 2004, and it's an apartment.

15 CHAIRPERSON JORDAN: Let me say  
16 this. I can't tell you how to handle your  
17 matter. I can't do that. You are going to have  
18 to apply, and go through the process, and then  
19 at that time, as you go through the process you  
20 will understand. Or, if you hire an architect  
21 or lawyer or somebody, or you can do it yourself,  
22 but we can't advise you on how to process your

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1 application.

2 MS. JEFFERSON: The zoning, that's  
3 why we are here, the effect of the business in  
4 that area when someone open a business. So,  
5 that's why I came here, before you make your  
6 decision, letting you know what is, you know,  
7 going to be a problem there later. You know  
8 what I'm saying?

9 CHAIRPERSON JORDAN: Okay. Give  
10 me a second.

11 Let's do this. I'm going to adjust  
12 the order of how we normally take testimony and  
13 questions, and you will have three minutes to  
14 voice to the Board your issues and concern about  
15 this application, and this application only.

16 MS. JEFFERSON: All right.

17 CHAIRPERSON JORDAN: Okay? So, if  
18 you will proceed, you have three minutes to tell  
19 us what you want to tell us.

20 MS. JEFFERSON: Okay. I am  
21 concerned when this business be open, how is  
22 going to be the effect on the other businesses

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1 next to the proposed child care that be opening  
2 in that area. And, what will going to be happen  
3 on our client also.

4 So, are we going to be fighting with  
5 the parking? But, I think also in Kennett  
6 Street, that they have a child care next to each  
7 other, so my concern is, would they be okay,  
8 because you guys familiar with this area than  
9 I, you know, you'd be the pro on this matter,  
10 so I'm bringing my concern.

11 So, for her to be able to open a  
12 business there, which is good for the community  
13 actually, only my concern is when I open mine,  
14 then how is that going to effect.

15 That's all.

16 CHAIRPERSON JORDAN: Does anyone  
17 have a question or anything you want to say to  
18 the person? I'm going to consider it in kind  
19 of in opposition?

20 Well, one thing that's required  
21 prior to processing the application is that the  
22 office -- Department of Transportation has to

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1 do an evaluation of the area, and make a  
2 determination, a recommendation to this Board  
3 on how to proceed. If traffic is going to be  
4 a problem, if parking is going to be a problem,  
5 it is for the Department of Transportation to  
6 make a recommendation, to do an observation and  
7 analysis, and then report back to this Board.

8 So, one was done in this case, and  
9 if you do apply one would be done in your case.

10 Okay? They are the body that really makes that  
11 determination, and then this body gives -- will  
12 review the report and determine whether or not  
13 the information there is sufficient to determine  
14 that there's going to be an adverse impact to  
15 the area regarding vehicles parking, and traffic  
16 congestion, and all of that.

17 Do you understand?

18 MS. JEFFERSON: So, any business  
19 that would be open in that area, in that  
20 vicinity, should be apply, I have to approach  
21 Transportation when I open a business over  
22 there?

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1 CHAIRPERSON JORDAN: It depends on  
2 what business you open, how it is zoned over  
3 there, whether or not a Certificate of Occupancy  
4 is already available to you or not, all of that.

5 MS. JEFFERSON: Because I check 941  
6 a long time ago, when we purchase the property,  
7 it's zoned for any business, restaurant, child  
8 care, anything on that matter.

9 VICE CHAIRPERSON SORG: Perhaps I  
10 can jump in to help clarify.

11 So, different businesses have  
12 different parking requirements. Some have  
13 none. Some have more. And, it's also based  
14 on the specific facts about your property.

15 And so, if you decide what kind of  
16 business you were to start, then you would go  
17 to the relevant agencies to find out what  
18 potential parking requirement there would be.

19 But, I think as the Chair mentioned,  
20 we are here to talk about Petit Scholars, which  
21 is a business that will be operating as a matter  
22 of right, and all we are here to talk about today

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1 is one parking space.

2 And so, I feel that I've heard what  
3 your concerns are with regard to the case that's  
4 at hand today.

5 If you have questions about your own  
6 business, there's many people in this building  
7 and so forth, you know, in this office, who can  
8 help point you in the right direction, outside  
9 of the hearing that we are having right now I  
10 think.

11 That would just be my comment.

12 CHAIRPERSON JORDAN: Anyone else?

13 All right, thank you, that's -- what  
14 Vice Chairperson Sorg provided you with is  
15 probably the best advice, for you to talk to  
16 people and find out how to go about it.

17 This hearing is in regards to a  
18 special exception, in regards to the number of  
19 parking spaces that are required.

20 And, we have your testimony in  
21 regards to what you believe is the issue,  
22 something that we will weigh in our discussion.

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1 MS. JEFFERSON: Yes. I'm  
2 concerning that, because she's requesting so  
3 much space, so much parking, is that -- I mean,  
4 am I correct on that? She's here to request  
5 --

6 CHAIRPERSON JORDAN: Have you read  
7 her application, and what the request is?

8 MS. JEFFERSON: No. I only, you  
9 know, I was sick, and then when I got this one  
10 I call you guys and the hearing is today.

11 CHAIRPERSON JORDAN: What is being  
12 requested is that the Regulations will require  
13 this child care center to have one parking space,  
14 and she's requesting this Board to give a special  
15 exception to that rule, to that regulation, to  
16 not be required to have any parking space. So,  
17 it goes from one to zero, is what she's  
18 requesting.

19 MS. JEFFERSON: Okay.

20 CHAIRPERSON JORDAN: Okay?

21 MS. JEFFERSON: And, I thought --  
22 okay.

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CHAIRPERSON JORDAN: Okay.

MS. JEFFERSON: I got it.

CHAIRPERSON JORDAN: We are with you. Good, thank you.

Okay. Turning now, let's -- and I took this out of order, because we believe that the record is pretty full in this case. Anyone have any issues?

And that, all the evaluations have been properly done. So, to the applicant, we don't, necessarily, believe that you need to provide any testimony, but you can if you want to, because it's your right to do so.

But, we would be in a posture and position, I believe everyone has read the record, and everyone believes they have enough information to move forward with this, everyone?

Okay.

In that case, based upon the record, I believe the applicant has satisfied the burden of proof and the elements necessary for a special exception of 2108, that this case is one which

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1 the requirements provide that -- and upon  
2 examination -- that the applicant and the  
3 property location is one that has been analyzed,  
4 that the maximum number of people expected at  
5 this facility won't have an adverse impact on  
6 the neighborhood and parking, that the  
7 Department of Transportation report says  
8 there's no negative traffic implications in  
9 regards to the reduction from one to zero in  
10 regards to parking space, and that there's  
11 significant alternative parking in the area,  
12 and that there is sufficient public  
13 transportation in close proximity to the  
14 facility.

15 The Office of Planning has  
16 recommended that this application be granted,  
17 which will receive great weight.

18 The record -- so this decision will  
19 be based on everything in the record,  
20 particularly, that there is the Department of  
21 Transportation's recommendation and evaluation  
22 that there is no implications by granting this.

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1                   And so, I would so move that the  
2 applicant's request be granted.

3                   MEMBER MacMURRAY: Mr. Chairman, I  
4 second your motion.

5                   CHAIRPERSON JORDAN: Motion made  
6 and seconded to approve the application.

7                   Any questions?

8                   ZC MEMBER TURNBULL: Mr. Chair, I  
9 don't have any questions, I just wanted to add  
10 a comment that Department of Transportation has  
11 also weighed in, and they concur that there would  
12 be minimal, or no impact, by allowing this  
13 special exception. In fact, they cite several  
14 areas with plenty of off-street parking, and  
15 they note that the funeral home has even offered  
16 space in their lot for staff parking.

17                   So, I just wanted to bring that up  
18 for the record.

19                   CHAIRPERSON JORDAN: Good. I  
20 thought I said that. Let's make sure that is  
21 also part of the findings on this case, that  
22 the Department of Transportation's report was

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1 very significant in that regard, and the Office  
2 of Planning. Okay.

3 All those in favor of the motion  
4 signify by saying aye.

5 (Ayes.)

6 CHAIRPERSON JORDAN: Those opposed  
7 nay?

8 The motion carries.

9 MS. HAM: Thank you.

10 SECRETARY MOY: Staff would, for  
11 the record, record the vote as 5:0:0. This is  
12 on Chairman Jordan's motion to approve the  
13 application for special exception relief under  
14 2108.1. Seconding the motion Ms. MacMurray.  
15 Also in support of the motion, Mr. Turnbull,  
16 Ms. Sorg and Mr. Hinkle. So again, the final  
17 vote is 5:0:0 to approve with a summary order.

18 MS. HAM: Thank you.

19 CHAIRPERSON JORDAN: Thank you.

20 SECRETARY MOY: The next  
21 application before the Board for this  
22 afternoon's session is Application No. 18333.

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1 This is the application of Grant Parker, or  
2 Barker, rather, pursuant to 11 DCMR 3103.2.  
3 This is for a variance from the minimum lot area  
4 requirements under Subsection 401.3, to allow  
5 the conversion of an existing three-unit  
6 apartment house to a four-unit apartment house.  
7 This is in R-4 District, at Premises 821  
8 Randolph Street, N.W., property located in  
9 Square 3027, Lot 85.

10 CHAIRPERSON JORDAN: Will the  
11 parties come to the table, please?

12 And, when did we get the ANC report  
13 in, just now?

14 SECRETARY MOY: It was personally  
15 delivered about a half hour ago, sir.

16 CHAIRPERSON JORDAN: Okay. Well,  
17 let's take that as a preliminary matter.

18 We just received the ANC-4C report  
19 and recommendation, which has come in to us less  
20 than the required time period. And so, we would  
21 have to waive the requirements for receipt of  
22 this application.

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1                   Does anyone have a feel for it, one  
2 way or the other?

3                   VICE   CHAIRPERSON   SORG:        Mr.  
4 Chairman, I think this is an important piece  
5 of information, and I don't think that we would  
6 be prejudiced by accepting it, personally.

7                   CHAIRPERSON JORDAN:  Anyone else?

8                   So, we would, by consent, accept  
9 this.  Well, excuse me, let me go to the  
10 opposition.  Do you have any opposition to our  
11 acceptance of this document?

12                  MR. BARKER:  No, that's fine.

13                  CHAIRPERSON JORDAN:  So, we'll do  
14 it by consent all the way across the Board by  
15 accepting and waiving the seven-day requirement  
16 and accept this as part of the record.

17                  Okay, let's proceed.  Would you  
18 identify -- who is the applicant?

19                  MR. BARKER:  I am.

20                  CHAIRPERSON JORDAN:  Would you  
21 identify yourself, please?

22                  MR. BARKER:  My name is Grant

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1 Barker. I'm the applicant.

2 CHAIRPERSON JORDAN: Grant Barker?

3 MR. BARKER: Barker, with a B.

4 CHAIRPERSON JORDAN: Okay. Others  
5 at the table?

6 MR. JONES: Yes, I'm Timothy A.  
7 Jones, ANC Advisory Neighborhood Commissioner  
8 for the Single Member District 4C08.

9 MR. CRUICKSHANK: I'm Neil  
10 Cruickshank. I'm the architect representing  
11 Mr. Grant.

12 CHAIRPERSON JORDAN: Cruick --

13 MR. CRUICKSHANK: Cruickshank,  
14 with a C.

15 CHAIRPERSON JORDAN: Yes?

16 MS. STREET: I am Lolita Street.  
17 I live across the street from Mr. Barker, and  
18 I just had some concerns about the application.

19 CHAIRPERSON JORDAN: Okay, thank  
20 you.

21 I don't believe that we have a letter  
22 from the applicant regarding you, Mr.

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1 Cruickshank, regarding representation. I  
2 don't believe there's one in the file.

3 MR. CRUICKSHANK: There probably is  
4 not.

5 CHAIRPERSON JORDAN: Okay. Then  
6 we need to have the applicant to acknowledge  
7 that you are his representative.

8 MR. BARKER: Mr. Cruickshank is my  
9 representative.

10 CHAIRPERSON JORDAN: And, we would  
11 -- and then, subsequently, we need to get a  
12 letter, Mr. Secretary, or can we just accept  
13 it on the record.

14 SECRETARY MOY: We've done it both  
15 ways. I mean --

16 CHAIRPERSON JORDAN: Okay, we'll  
17 accept it on the record. I just want to make  
18 sure he wasn't stepping on any toes, because  
19 it seemed like it was perfunctory. Okay, good.

20 And, I'm going to assume, are you  
21 for or against the application?

22 MS. STREET: I guess I'm opposed,

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1 but I wanted to voice some concerns, based on  
2 it.

3 CHAIRPERSON JORDAN: Okay. All  
4 right. So, let's -- and we have the ANC letter.  
5 You are representing the ANC in regards to the  
6 matter?

7 MR. JONES: That is correct.

8 CHAIRPERSON JORDAN: Got you.  
9 Thank you, appreciate it.

10 Let's proceed with the statement  
11 from the applicant, for the applicant's case,  
12 please.

13 MR. CRUICKSHANK: Essentially, the  
14 applicant has a three-unit apartment. When he  
15 first purchased the apartment, the basement unit  
16 has a residential piece at the rear of it, and  
17 at the front of the apartment there was an area  
18 that was used as an office.

19 I think, and he can clarify this,  
20 but I think he mistakenly thought that he had  
21 four units in the apartment when he bought it.

22 However, when he came to me to ask me to do

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1 the conversion, and I did the zoning check, I  
2 realized that the area was not enough to do the  
3 conversion to meet codes.

4 I explained this to him, and he asked  
5 us to go ahead and apply for BZA approval on  
6 his behalf.

7 Once we got into the case, what we  
8 were able to present for Mr. Barker is four  
9 units, as laid out by the drawings that we  
10 submitted. However, in his situation, because  
11 of the size of the lot, we were also able to  
12 provide four off-site parking spaces, which went  
13 over well at the ANC meeting that I attended.

14 However, apparently, it wasn't enough to get  
15 their support.

16 Currently, there is a unit on the  
17 first -- on each floor, first floor, second  
18 floor, and the basement unit is the unit that  
19 we are trying to divide into two units.

20 We have gone ahead and applied for  
21 a building permit, which we received, to  
22 renovate the vacant area of the basement unit.

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1       However, it is not separated at this time.  
2       If the Board grants us the separation, then what  
3       we would need to do is go back and apply for  
4       a conversion, and get a separate meter and  
5       separate utilities for that space.

6               That's, basically, the point where  
7       we are, hoping to get your support.

8               CHAIRPERSON JORDAN:     Okay.     Is  
9       there anything else you want to present to the  
10      Board?   We already have everything that you  
11      filed, we have.

12              MR. CRUICKSHANK:   Yes, I think you  
13      have these drawings that I have in front of me.

14              CHAIRPERSON JORDAN:   Yes, we have  
15      everything that you have submitted.   Is there  
16      anything else that you want to submit with this  
17      file?

18              MR. CRUICKSHANK:   No.

19              CHAIRPERSON JORDAN:   And, what is  
20      your back -- what do you do, are you the  
21      contractor or what is your background?  
22      Architect.   And, when did you become involved

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1 in this project?

2 MR. CRUICKSHANK: About six months,  
3 plus or minus, about six months ago, when he  
4 approached to do the conversion, when he  
5 approached our office to do the conversion.

6 CHAIRPERSON JORDAN: Mr. Barker,  
7 when did you -- when did you purchase this  
8 property?

9 MR. BARKER: In June of last year,  
10 2011.

11 CHAIRPERSON JORDAN: June, 2011?

12 MR. BARKER: Yes.

13 CHAIRPERSON JORDAN: And, Mr. -- is  
14 it Cruickshank?

15 MR. CRUICKSHANK: Cruickshank.

16 CHAIRPERSON JORDAN: Cruickshank.

17 And, you've been involved since  
18 November or so? Okay.

19 Any other questions for the  
20 applicant?

21 Mr. Turnbull, please?

22 ZC MEMBER TURNBULL: Yes. I guess

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1 one question for both, for either one of you,  
2 is that you are looking for a variance from  
3 401.3, but in your testimony you haven't  
4 addressed any of the issues regarding the  
5 variance, and which I think, if you've read the  
6 Office of Planning report, basically, there's  
7 nothing specifically unique about your  
8 property. But, you haven't really addressed  
9 any, other than the fact that you bought the  
10 property under an assumption that you could do  
11 something with it.

12 But, I haven't heard anything yet  
13 that would sway me to say how you are meeting  
14 the variance, or what is specific or unique about  
15 your property that would make this Board want  
16 to grant you a variance.

17 MR. CRUICKSHANK: Well, just  
18 speaking from the concerns that we got from the  
19 neighborhood, was the concern of parking, and  
20 to explain that there's a lot of difficulty  
21 parking on the street.

22 In this particular case, we wouldn't

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1 be adding to that, in fact, we would be able  
2 to provide off-street parking for the residents  
3 of the apartment house.

4 The lot is a regularly-shaped lot.

5 I mean, it's just too small to meet a four-unit  
6 requirement, and there aren't any other concerns  
7 except that it is too small.

8 VICE CHAIRPERSON SORG: I'll just  
9 kind of keep on the same line as Mr. Turnbull  
10 started with.

11 Just by your answer, your answer to  
12 Mr. Turnbull's question has to do with parking,  
13 and that you wouldn't be, you know, adding to  
14 any, you know, issues of parking in the  
15 neighborhood, given that you've got two legal  
16 spots or four tandem spots, depending on how  
17 you look at it.

18 With regard to the parking, I think  
19 this is perfectly fine, but that's not really  
20 the problem here. Okay. The problem that we  
21 have to address is that issues in terms of  
22 parking go towards the second prong of the

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1 three-prong variance test. Okay?

2 So, the deal with the variance test  
3 is that you have to get over the first prong  
4 to say there's something unique about this  
5 property, whether it's with the sloping, or it's  
6 really narrow, or it's extra big, or something,  
7 or a component of things that could have to do  
8 with, you know, anything from something having  
9 to do with the topography, something having to  
10 do with the state of the existing building,  
11 something having a little bit from that, a little  
12 bit from finances, a little bit from whatever,  
13 to get over that leads you to have a difficulty  
14 in using the property as per the zoning  
15 regulations.

16 Then we get to talk about parking  
17 and more people living there and things like  
18 that. But, I agree with Mr. Turnbull, I don't  
19 see a lot here, and, you know, I am personally  
20 understanding of getting into a property in this  
21 way, and not knowing -- thinking you can do  
22 something, thinking, you know, and then finding

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1 out that you can't. But, that's,  
2 unfortunately, not something that we as a Board  
3 can do something about.

4 So, I mean, for me, I really would  
5 need to hear from the applicant, and any other  
6 comments he might have, about the first prong,  
7 which is, what is the exceptional situation of  
8 this property, among many different types of  
9 possible, you know, exceptional situations that  
10 result in the practical difficulty of you using  
11 this as what is currently an allowed three-unit  
12 building. You've got to connect those, before  
13 we can consider parking, before we can consider  
14 anything else.

15 MR. BARKER: Okay, sure.

16 I guess the practical difficulty  
17 would be in having a three-bedroom basement  
18 apartment, none of which there are in D.C.

19 VICE CHAIRPERSON SORG: Okay. If  
20 you --

21 CHAIRPERSON JORDAN: Well, let --

22 MR. BARKER: Or, at least, not that

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1 have been sold in the last two years.

2 CHAIRPERSON JORDAN: -- yes, but  
3 the first question was, what was unique about  
4 the property? I think that's the first  
5 question.

6 MR. BARKER: I guess the unique  
7 thing is that it currently has a three-bedroom  
8 basement apartment.

9 I mean, the deal with the lot area,  
10 I mean, if there's ever been any exception to  
11 lot area it has to do with the fact that the  
12 lot is too small, right? And, that's what we  
13 are asking for an exception for.

14 So, unless there's never any --  
15 unless there's never been like a lot area  
16 exception granted, because you just don't have  
17 the lot size if you don't have the lot size.  
18 You just don't have it. There's nothing you  
19 can do about it.

20 VICE CHAIRPERSON SORG: Certainly.

21 MR. BARKER: But, my problem isn't  
22 that it's oddly shaped, I can't park there.

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1 It's just that there's not enough of it.

2 So, maybe that's just the end of it  
3 right there. I mean, I don't know.

4 VICE CHAIRPERSON SORG: It is not  
5 the case that a substandard size lot has never  
6 gotten an exception for increased density.  
7 That's not the case.

8 And, your statement that the  
9 property is now configured with this  
10 three-bedroom unit in the basement is with some  
11 reasoning -- it's potentially an exceptional  
12 situation, but I don't -- we don't have any  
13 evidence, aside from your statement, that says  
14 that.

15 For example, people who make these  
16 same requests give us, you know, a lot of  
17 financial information, a lot of research about  
18 what's available on the real estate market  
19 locally, a lot of information about what other  
20 kinds of properties are in the area, a lot of  
21 information about that. And, you know, a lot  
22 of research about, perhaps, you know, past cases

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1 and things like that.

2 So, the record here, aside from your  
3 statement that this is unique and it will be  
4 hard for me to sell it, it's not -- you know,  
5 there's no evidence.

6 MR. BARKER: Sure. If you'd like,  
7 I can prepare more evidence and maybe present  
8 it.

9 CHAIRPERSON JORDAN: Well, let me  
10 say this, and we've been given a lot of leeway.

11 When we come here, we should be ready  
12 to go and present the things that's necessary.

13 I think the Vice Chairperson has  
14 been really very lenient in trying to give you  
15 some grounds to grow into it, and we can't do  
16 it by statement by statement, is that good  
17 enough? We can't do it that way, and that's  
18 not the way that it goes.

19 And, from what I see in the record,  
20 and haven't seen to the contrary, you already  
21 have a compliant use. You already have a use  
22 that is compliant within the Zoning Regs.

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MR. BARKER: Exactly.

CHAIRPERSON JORDAN: So, you are not being forbidden from using the property within a compliant zoning use, for one.

And so, we can't do it that way. We cannot continue to go statement by statement, and trying to see if you are reaching it.

We asked for you to present your case. The evidence that you presented in this record, and it's not to shoot a shotgun and then hope that one of them is going to hit. Okay?

So, that's why you've been asked the question, and I think we've been trying to help you move this thing along, and I don't think we are getting there.

MR. BARKER: I'm sorry. I still feel like people, normal people, should be able to work through the system without the aid of a lawyer.

And, you are right, I have been stumbling through this process. I have received a lot of help.

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1                   CHAIRPERSON JORDAN: Did you meet  
2 with the Office of Planning, and they talked  
3 you through the process?

4                   MR. BARKER: I did. I did, Karen  
5 was very helpful.

6                   But, yes, I mean, I've never done  
7 this before, so I don't -- I mean, I don't want  
8 to waste you guys time. I mean, obviously, I  
9 mean, the ANC voted no. I mean, I need to go  
10 back to them, I think first, and get their yes  
11 vote, and then I'd like to come back.

12                   The Office of Planning, I think, is  
13 always going to say no on this. We don't have  
14 to go on if you don't want to.

15                   VICE CHAIRPERSON SORG: I just want  
16 to make a comment. This is your time, okay,  
17 to present your case as you want to.

18                   But, I think you are hearing a little  
19 bit of the way the wind is blowing, which is  
20 that there's not really a lot of information  
21 here, and, certainly, you see that there's some  
22 opposition.

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1                   If you, and I don't want to, you  
2 know, take the role which is the Chair's  
3 position, but, you know, to -- we understand  
4 that regular people come here and they are not  
5 lawyers. They may not have gone through this  
6 process before. And, people do it in different  
7 ways, and it takes starts and stops, and things  
8 like that. We understand that.

9                   And, you know, I personally think  
10 that it may be not a bad idea for you to be able  
11 to gather more evidence, think more about what  
12 could be convincing, you know, look at other  
13 cases, whatever it is that you think will be  
14 necessary.

15                   But, I don't want you to think that  
16 this Board is not sensitive to, you know, regular  
17 people and how you go through this.

18                   CHAIRPERSON JORDAN: Let's do this.

19                   I'm willing to continue this application and  
20 hearing to another date and time, if it's okay  
21 with the Board, if the Board Members are good  
22 with that.

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Mr. Turnbull?

ZC MEMBER TURNBULL: Yes, I'm amenable to that.

CHAIRPERSON JORDAN: Ms. Sorg, I think you indicated, and everyone else.

And so, we will grant you that, and allow you to spend some more time with Planning, and see if you can get there. You may not be able to get there, we don't know.

MR. BARKER: Right, but at least I can give you some more stuff, more of what you are looking for.

CHAIRPERSON JORDAN: And, is there a potential date and time?

SECRETARY MOY: Yes, sir, Mr. Chairman. The Board's next hearing is two weeks from today, which would be May 1st. The hearing after that would be May 8th. So, either of those two dates in the afternoon there's a space.

CHAIRPERSON JORDAN: But, I also want to be fair to the party in opposition and the ANC, particularly. We have the ANC letter,

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1 and I don't know what the availability would  
2 be for coming back, or if you want to leave  
3 something on the record now you can do that,  
4 if you like.

5 MS. STREET: I would like to just  
6 put it on the record now.

7 CHAIRPERSON JORDAN: Yes, because  
8 I wouldn't want you to --

9 MS. STREET: Thank you.

10 I live at 814 Randolph Street. I  
11 live between two houses that are, whether they  
12 are legal or not legal rental properties I'm  
13 not sure, but each individual rents out each  
14 room in the property on short-term leases.

15 And, I understand that this is a  
16 house that's been converted into an apartment.

17 And, there are, you know, legally he can have  
18 three tenants there.

19 To add to the other side of the  
20 street, which I live on, which has six town  
21 homes, three of which are rental properties,  
22 I'm one of two homeowners that actually live

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1 in their homes.

2 The concern for me is, I don't know  
3 how he's vetting these people. I don't know,  
4 you know, there's a lot of houses that are  
5 turning into rental properties, and it's taking  
6 away from the actual community that I moved to.

7 And, I don't know, you know, as a single woman  
8 living by herself, and I don't know who my  
9 neighbors are.

10 And, to add to that, by turning a  
11 structure that's been the way it is for, you  
12 know, years, and years, and years, to, actually,  
13 add to capacity there is a problem and concern  
14 for me. In addition to the parking and other  
15 things that come with it, tenants historically,  
16 from the houses that are around me, the  
17 homeowners aren't maintaining the properties.

18 They, basically, get them to maximum capacity  
19 and then they move it. They don't maintain the  
20 property.

21 So, it's a problem that can add on  
22 to -- other things can happen that aren't being

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1 discussed here, but, you know, my concern is  
2 the capacity the houses were built for, and now  
3 we are converting them to be more people, and  
4 how are you vetting them, and how long are they  
5 intending to be there, and this is taking away  
6 from the community.

7 CHAIRPERSON JORDAN: Thank you.  
8 We appreciate your comment. We will put that  
9 as part of the record.

10 Mr. Jones, did you want to -- you  
11 know, you say you are willing, if you have the  
12 opportunity to come back, are you going to leave  
13 the comment on the record? We do have the ANC  
14 letter, but you are here so I certainly want  
15 to give deference to you, if there's anything  
16 you want to add to the record.

17 MR. JONES: Well, the only thing  
18 that I could, basically, add to the record is  
19 contained in the letter. If you proffer to do  
20 something, then do it, which is stated in the  
21 letter.

22 CHAIRPERSON JORDAN: All right,

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1 great. So, thank you, appreciate that, and  
2 appreciate you both, all of you, for coming down  
3 today.

4 I'm sorry, Mr. Secretary, the date  
5 that this will be continued to?

6 SECRETARY MOY: In two weeks we have  
7 the afternoon of May 1st, or the following week  
8 the afternoon for May 8th. That's the Board's  
9 choice, or if you feel --

10 MR. BARKER: I think it would be  
11 good to after the next ANC meeting.

12 CHAIRPERSON JORDAN: I think we can  
13 put this one some time in June.

14 SECRETARY MOY: Oh, we are talking  
15 June?

16 CHAIRPERSON JORDAN: Yes.

17 SECRETARY MOY: Oh, that's right,  
18 I'm sorry. I'm sorry for that.

19 So, we could be looking at -- we have  
20 four cases in the morning of June 5th. This  
21 could be the 5th case, Mr. Chairman, or following  
22 that the next opportunity would be June 19th.

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1 CHAIRPERSON JORDAN: Okay, June  
2 19th.

3 MR. BARKER: June 19th?

4 VICE CHAIRPERSON SORG: I just want  
5 to ask the Chairman one quick question before  
6 we leave.

7 Mr. Barker, are you planning on  
8 living in this property?

9 MR. BARKER: Yes.

10 VICE CHAIRPERSON SORG: Okay.

11 MR. BARKER: I have an FHA loan, and  
12 I'm required to live in it for, like, at least  
13 two years anyway.

14 CHAIRPERSON JORDAN: Three.

15 MR. BARKER: Three years.

16 CHAIRPERSON JORDAN: Three years  
17 FHA.

18 So, this matter will be continued  
19 to -- is it June 19th?

20 SECRETARY MOY: June 19th.

21 ZC MEMBER TURNBULL: Mr. Chair, I'd  
22 just like to add one thing, which the Vice Chair

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1 was getting to, the variance test is a very  
2 rigorous test. I mean, and I'm sure you've gone  
3 through it with Ms. Toppas from OP.

4 But, it has to be clearly evident  
5 from that first prong, and as you go through  
6 the others, it has to be clear to the Board that  
7 there's something special about this property  
8 that would move us to grant this.

9 MR. BARKER: Okay.

10 ZC MEMBER TURNBULL: It can be a  
11 tough test.

12 MR. CRUICKSHANK: Does that  
13 automatically get us another hearing with the  
14 ANC, or how will that work?

15 ZC MEMBER TURNBULL: You would have  
16 to arrange that I think would be the answer.

17 MR. BARKER: Yes, we have to talk  
18 to the ANC to do that.

19 MS. STREET: Can I also say  
20 something?

21 CHAIRPERSON JORDAN: Yes, go ahead.

22 MS. STREET: I think that's the

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1 problem that I have, is that once the three years  
2 are up then -- I mean, I'm a homeowner, so once  
3 the three years are up that's when the problems  
4 -- you know, in the past these apartments are  
5 not being maintained. And so, that's my  
6 concern, especially, if you are now adding  
7 capacity. That is a single-family home that's  
8 been converted.

9 CHAIRPERSON JORDAN: Thanks. We  
10 have your comments on the record, appreciate  
11 it.

12 MR. BARKER: Thank you.

13 CHAIRPERSON JORDAN: Okay. We're  
14 (Whereupon, comments off mic.)

15 CHAIRPERSON JORDAN: Okay. We're  
16 now calling Case 18324, the Roane-Woesley LLC  
17 matter. We've called this, I guess, for the  
18 third time. There's no one appearing to be  
19 here.

20 Additionally, this case was on the  
21 docket previously for, I think it was, April  
22 3rd, was that correct? April 3rd, and no one

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1 appeared at that particular point.

2 We then, subsequently, Mr.  
3 Secretary, we sent notice to the applicant?

4 SECRETARY MOY: Better than that,  
5 Mr. Chairman, in my role as Secretary I,  
6 actually, spoke with the applicant, with the  
7 owner. So, he is well aware of the Board's  
8 concern from that last hearing date, and I  
9 impressed on him to appear before the BZA at  
10 the scheduled hearing date of today, Tuesday,  
11 April the 17th.

12 CHAIRPERSON JORDAN: Hearing that,  
13 and this matter has been before us twice without  
14 having an representation, anyone appearing on  
15 it, and as required under the regs, we did  
16 additional follow-up and notice that they needed  
17 to appear at this hearing before we would,  
18 potentially, dismiss their case.

19 I think this is more than ripe for  
20 dismissal for failure to move it along. And,  
21 the Secretary, actually, talked to this  
22 gentleman, made an affirmative act of calling

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1 him again today to make sure he was going to  
2 come, and he said he was coming. However, he's  
3 not here.

4 Any feel for that, anyone?

5 VICE CHAIRPERSON SORG: Mr.  
6 Chairman, I would agree. This is the second  
7 time that we have called it, and no one appears  
8 to be available to continue to prosecute the  
9 case.

10 CHAIRPERSON JORDAN: With that, I  
11 would move that we dismiss this application,  
12 for failure to prosecute, after being duly  
13 noted.

14 VICE CHAIRPERSON SORG: I would  
15 second that.

16 CHAIRPERSON JORDAN: Motion made  
17 and seconded to dismiss this particular  
18 application, No. 18324, for failure to prosecute  
19 after receiving due notice of showing up.

20 Any questions?

21 Seeing none, all those in favor  
22 signify by saying aye.

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(Ayes.)

CHAIRPERSON JORDAN: Those opposed  
nay.

We have just one other order of  
business. I'm just trying to -- Mr. Secretary,  
are we clear?

As Chairperson of the Board of  
Zoning Adjustment for the District of Columbia,  
and in accordance with Section 407 of the  
District of Columbia Administrative Procedural  
Act, I move that the Board of Zoning Adjustment  
hold a closed meeting on April 24th at 1:30 p.m.,  
for the purpose of conducting internal training  
pursuant to D.C. Official Code Section 2-575,  
Subsection B12.

Is there a second?

VICE CHAIRPERSON SORG: Second.

CHAIRPERSON JORDAN: Motion has  
been made and seconded.

Would the Secretary please take a  
roll call vote on the motion before us now that  
has been seconded?

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1                   SECRETARY MOY:  Yes, sir.  When I  
2 call a vote, if the Members can respond by yes  
3 or no, yeah or nay.

4                   CHAIRPERSON JORDAN:  Let me -- can  
5 I --

6                   SECRETARY MOY:  Yes, please.

7                   CHAIRPERSON JORDAN:  -- let me say  
8 it's a telephone conference meeting.

9                   SECRETARY MOY:  Very good.

10                   Mr. Turnbull?

11                   ZC MEMBER TURNBULL:  Yes.

12                   SECRETARY MOY:  Vice Chair Sorg?

13                   VICE CHAIRPERSON SORG:  Aye.

14                   SECRETARY MOY:  Chairman Jordan?

15                   CHAIRPERSON JORDAN:  Yes.

16                   SECRETARY MOY:  Ms. MacMurray?

17                   MEMBER MacMURRAY:  Yes.

18                   SECRETARY MOY:  Mr. Hinkle?

19                   MEMBER HINKLE:  Yes.

20                   SECRETARY MOY:  The vote is 5:0:0,  
21 the roll call vote motion carries, Mr. Chairman.

22                   CHAIRPERSON JORDAN:  Thank you.

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And, seeing that motion is passed,  
I hereby give notice that the Board of Zoning  
Adjustment will hold a telephone conference  
closed meeting on April 24th at 1:30 p.m., to  
conduct initial training.

Notice will also be posted in the  
Office of Zoning, Electronic Reading Room,  
placed on the Office of Zoning's electronic  
calendar on its website, and published in the  
District of Columbia Register in as timely a  
manner as practical.

Is there any other business to come  
before the Board today?

Seeing none, then we stand  
adjourned.

(Whereupon, the above-entitled  
matter was concluded at 1:59 p.m.)

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