

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MAY 1, 2012

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
RASHIDA MacMURRAY, Board Member
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

KONRAD SCHLATER, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MAXINE BROWN-ROBERTS
STEVEN COCHRAN
MATT JESICK
ARTHUR JACKSON

The transcript constitutes the minutes from the Public Hearing held on May 1, 2012.

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

2 9:36 a.m.

3 CHAIRPERSON JORDAN: If the meeting
4 will please come to order.

5 Good morning, ladies and gentlemen.

6 We are located in the Jerrily R. Kress Memorial
7 Hearing Room at 441 4th Street, today is May
8 1st, 2012, for the public hearing of the Board
9 of Zoning Adjustment of District of Columbia.

10 My name is Lloyd Jordan,
11 Chairperson. Joining me today to my right is
12 Ms. Rashida MacMurray and to her right, Jeffrey
13 Hinkle, Board Members and to my left, Konrad
14 Schlater representing the Zoning Commission.

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

20 The Board's hearing procedures and
21 how we will process applications and appeals
22 can be found on the table by the back door.

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1 Let 's begin today 's hearing agenda.

2

3 All individuals wishing to testify
4 today please rise to take the oath.

5 Mr. Secretary, would you please
6 administer the oath?

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

11 Ladies and gentleman, you may
12 consider yourselves under oath.

13 CHAIRPERSON JORDAN: Thank you.
14 We'll handle preliminary matters with the cases
15 when they're called if that's good for you, Mr.
16 Secretary.

17 MR. MOY: Oh, absolutely.
18 Definitely if it's good for you, Mr. Chairman.

19 CHAIRPERSON JORDAN: Thank you.

20 MR. MOY: Good morning, Mr.
21 Chairman, Members of the Board.

22 The first of three applications

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1 before the Board for action is Application
2 Number 18340. This is the application of Eugene
3 R. Duda pursuant to 11 DCMR 3104.1 for a special
4 exception. This is allow a second story rear
5 addition to an existing one-family row dwelling
6 under Section 223 not meeting the lot occupancy
7 (Section 403), open court (Section 406) and
8 nonconforming structure (Subsection 2001.3)
9 requirements in the R-4 District. This is at
10 premises 2312 1st Street, N.W. Property
11 located in Square 3125, Lot 71.

12 CHAIRPERSON JORDAN: Good. Are
13 the parties -- please come forward and be sure
14 to turn on the microphones please. Push the
15 little push button and the green light will come
16 on and then if you introduce yourselves for us
17 please.

18 MR. DUDA: I'm Eugene Duda.

19 MS. ANTELO: I'm Cristina Antelo.

20 You talk into your microphone.

21 MR. DUDA: Oh. Eugene Duda.

22 MS. ANTELO: If we have additional

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1 material, should we bring those up now for the
2 secretary?

3 CHAIRPERSON JORDAN: What kind of
4 additional materials do you have?

5 MS. ANTELO: I had submitted to the
6 record a letter of petition of support from our
7 neighbors, but I have additional signatures that
8 we got over the weekend. So, I wanted to give
9 you an updated copy and we also have a letter
10 of support from our ANC members.

11 CHAIRPERSON JORDAN: We'll take
12 those, but I want to put you on notice as well
13 as others that we're probably going to start
14 holding very tight to our 14-day advance ruling
15 that requires documents to come before the Board
16 within 14 days before the hearing, but we will
17 take those today.

18 MR. DUDA: Okay.

19 CHAIRPERSON JORDAN: Initially,
20 after reviewing this case, I think -- on the
21 initial review of this case, there might be some
22 other relief that's necessary. Relief from

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1 404.1 or 401.3 and we would be amenable, if you
2 wished, to make an oral motion that you be
3 granted that additional relief that we believe
4 is necessary in this matter.

5 MS. ANTELO: I honestly don't know
6 what that is, sir. I don't know what 401.3 is.

7 CHAIRPERSON JORDAN: Well, we
8 believe that there's a requirement for relief
9 from the rear yard and also we have a
10 nonconforming lot with respect to the area and
11 the width that you need that relief if we were
12 to proceed and grant this.

13 MS. ANTELO: Okay.

14 CHAIRPERSON JORDAN: We'll take
15 that as an oral motion to amend.

16 MR. DUDA: Okay.

17 CHAIRPERSON JORDAN: The Board
18 Members have already reviewed most of -- have
19 reviewed your application and all the documents
20 and the evidence and exhibits submitted and we
21 believe that the record's pretty full.
22 However, you have the opportunity if you still

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1 think you need to tell us something more that
2 we already have looked at, then you can do so
3 or you can just waive and we can move to proceed
4 with the resolution of this matter.

5 MS. ANTELO: I think all of our
6 testimony's involved in here. Our description
7 of what we're hoping for. So, I guess we'll
8 waive that.

9 CHAIRPERSON JORDAN: All right.
10 Okay. Anybody has any other issues? Any
11 questions?

12 MEMBER HINKLE: Yes, Mr. Chair, I
13 just had one question and maybe it's a
14 clarification from the Office of Planning, but
15 -- and I'm trying to find -- oh, on the second
16 page, there's a reference to windows on the
17 northern and southern sides, but in the plans,
18 I don't see the windows noted and I was just
19 trying to get some clarification in terms of
20 where those were at.

21 I'm looking at our Exhibit Number
22 12 which is the floor plan for the existing and

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1 proposed second floor.

2 CHAIRPERSON JORDAN: Which page are
3 you on?

4 MEMBER HINKLE: Exhibit Number 12
5 on the first page.

6 CHAIRPERSON JORDAN: Oh, 12.
7 Okay.

8 MS. BROWN-ROBERTS: Go ahead.
9 Maxine Brown-Roberts from the Office of
10 Planning.

11 I think I was mostly talking about
12 there are some existing windows within the court
13 area and those are what I was talking about.
14 Okay.

15 MEMBER HINKLE: Yes, perhaps we
16 could ask the Applicant. Because it doesn't
17 appear in this bedroom add on in these plans.
18 I don't see any windows.

19 MR. DUDA: You do have the plans?
20 These plans? Okay. Excellent. On the --
21 well, there's not really a labeled page. But,
22 in one of the pages, there's a rear elevation

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1 and it shows where they --

2 MS. ANTELO: Should be under Part
3 C of the Application.

4 CHAIRPERSON JORDAN: Do you see a
5 window? Which diagram are you looking at?

6 MR. DUDA: The cross section. The
7 elevations page. Which I think would be the
8 third page in. Yes, the third page in.
9 Elevations.

10 CHAIRPERSON JORDAN: Oh, I see.
11 Okay.

12 MS. ANTELO: Hand-drawn portion on
13 the right.

14 MR. DUDA: Right. So, what -- yes,
15 we were told to add -- it was the rear elevations
16 and I guess maybe the confusion there is I put
17 win instead of window. I abbreviated it. But,
18 if you look, the exterior of the property with
19 this edition will have a window facing the rear
20 of the property and then again, I put window
21 on the drawing right above it which indicates
22 a side window as well for light.

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1 MEMBER HINKLE: Okay. Great.
2 Thank you for the clarification.

3 MR. DUDA: Thank you. Yes, I see
4 it. Sorry about that.

5 MEMBER HINKLE: No problem.

6 CHAIRPERSON JORDAN: Questions?
7 Mr. Schlater.

8 ZC VICE CHAIRMAN SCHLATER: Not a
9 question about the application. I just took
10 at quick look at the ANC letter and while it
11 doesn't meet the strict criteria for great
12 weight, it is a good letter and it's helpful
13 to have in the record.

14 One thing I will note is that the
15 ANC Commissioners noted disparate treatment of
16 homeowners by DCRA with respect to additions
17 like this and I do think it's important that
18 DCRA treat everybody the same particularly with
19 respect to additions like this. I mean if you
20 have to go through the process, I think all of
21 your neighbors should have to go through the
22 process as well.

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1 MR. DUDA: We agree.

2 ZC VICE CHAIRMAN SCHLATER: So,
3 what I would ask if maybe the secretary to send
4 this letter along to the DCRA. Maybe ask for
5 a response from the Zoning Administrator on
6 that.

7 CHAIRPERSON JORDAN: Yes, I think,
8 in fact, there's another case toward the end.
9 There's another similar type of letter for
10 someone saying kind of the same thing.

11 MS. ANTELO: I have more of those
12 materials for your reference. I have several
13 letters that we wrote to them. Probably four
14 or five that didn't get any responses from them
15 where we've brought several things to their
16 attention.

17 MR. DUDA: Completely ignored.

18 MS. ANTELO: So, if you want them
19 for your own reference, I'm happy to turn those
20 over.

21 CHAIRPERSON JORDAN: We're good.
22 We just -- we'll visit it a little later, but

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1 I think there's something. You're right.
2 Because as I said, the last case also has a
3 similar type of feel.

4 MR. DUDA: Oh, you had a case that
5 had -- oh, sorry.

6 ZC VICE CHAIRMAN SCHLATER: Okay.

7 Mr. Chair, I'd be happy to make that motion
8 to approve --

9 CHAIRPERSON JORDAN: Sure.

10 ZC VICE CHAIRMAN SCHLATER: -- BZA
11 Case Number 18340, 2312 1st Street, N.W.

12 CHAIRPERSON JORDAN: There's a
13 motion made and seconded that we approve
14 Application 18340 with the relief requested with
15 the additional relief of 404.1 and 401.3 and
16 that we adopt the record as a whole and find
17 that they meet all the requirements as required
18 for the relief requested for the special
19 exception.

20 Motion's been made. Any
21 unreadiness? Any questions?

22 All those in favor signify by saying

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1 aye.

2 (Ayes.)

3 CHAIRPERSON JORDAN: Those opposed
4 nay. Mr. Secretary.

5 MR. MOY: Before I give the final
6 call. Was there a second to your motion, sir?

7 It was. Mr. Hinkle. Okay. Thank you.

8 CHAIRPERSON JORDAN: And let me do
9 -- go ahead. Let me let you carry that motion.

10 MR. MOY: Okay. Staff would record
11 the vote as 4-0-1. This is on the motion of
12 Mr. Schlater to approve the application for the
13 relief as cited by the Chairman. Second the
14 motion Mr. Hinkle. Also in support of the
15 motion, Ms. MacMurray. So, again, the final
16 vote is 4-0-1. Ms. Sorg not present not voting.

17 CHAIRPERSON JORDAN: And this will
18 be a summary order please.

19 MR. MOY: Yes, sir. Thank you, Mr.
20 Chairman.

21 CHAIRPERSON JORDAN: Good. Thank
22 you. Appreciate it.

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1 MR. DUDA: We got it. Yes.
2 Thanks.

3 MS. ANTELO: Thank you.

4 MR. DUDA: Thank you.

5 MR. MOY: The next application
6 before the Board is Application Number 18341.
7 This is the application of Mohammad Sikder
8 pursuant to 11 DCMR 3103.2 for variances from
9 the lot area and lot width requirements under
10 Subsection 401, variance from the side yard
11 requirements under Section 405 to allow the
12 construction of a one-family detached dwelling
13 in the R\$-2 District at premises 4209 Grant
14 Street, N.E. Property located in Square 5092,
15 Lot 31.

16 CHAIRPERSON JORDAN: Thank you, Mr.
17 Secretary.

18 Would the persons at the table
19 please introduce themselves and make sure you
20 turn the microphone on, push it so you have the
21 green button.

22 MR. SIKDER: My name is Mohammad

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1 Sikder and I reside at 6660 Tennyson Drive,
2 Virginia.

3 MR. WALLS: My name is Lovell Walls.

4 I live at 4213 Grant Street, N.E. and that's
5 in Washington. 20019 is the zip code.

6 CHAIRPERSON JORDAN: Okay. Thank
7 you. Before we proceed in this, I believe
8 there's some preliminary issues that we need
9 to address.

10 We presently have pending Case 18205
11 on the same property requesting the same relief.

12 How is this application any different?

13 I'm taking a look on your face that
14 it's not -- in your knowledge that it's not --
15 you're not familiar with this issue.

16 MR. SIKDER: No, I didn't
17 understand what's -- what's --

18 CHAIRPERSON JORDAN: We presently
19 having pending a case, an application. We've
20 had testimony on it. The Case Number, I
21 believe, is 18205 and it's on the same property
22 for the same relief and so, I'm asking you what

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1 is the difference between this application and
2 the one that's pending?

3 MR. SIKDER: Oh, I see. This one
4 we admitted two floors and basement. It didn't
5 -- we didn't --

6 CHAIRPERSON JORDAN: You did what?

7 MR. SIKDER: We lowered the -- we
8 made -- reduced the size of the house.

9 CHAIRPERSON JORDAN: Reduced the
10 size of the house.

11 MR. SIKDER: And also, this time I
12 attempted to -- I mean contacted ANC members
13 to present my case better way.

14 CHAIRPERSON JORDAN: You had a
15 meeting with the ANC?

16 MR. SIKDER: No.

17 CHAIRPERSON JORDAN: You did not
18 meet with the ANC?

19 MR. SIKDER: Correct.

20 CHAIRPERSON JORDAN: You did meet
21 with the ANC in this one and the other one?

22 MR. SIKDER: No. Last time there

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1 was a miscommunication between me and the ANC
2 -- I mean the ANC -- ANC people, but this time,
3 I started talking with them. Emailing them from
4 February and I was confused with talking with
5 her. I mean emailing her. She -- one time she
6 said send me all seven copies or 11 copies of
7 the entire set which I sent to her. Then I asked
8 her when the --

9 CHAIRPERSON JORDAN: Are you
10 talking about this case or the one before?

11 MR. SIKDER: This case. The
12 previous case, she said -- she came here and
13 she was --

14 CHAIRPERSON JORDAN: But, let's not
15 go into the ANC issue right now. We will do
16 that. We need to first decide if this is a
17 matter in which there is something that we --
18 so I can get a clear understanding.

19 You said in this application, you
20 lowered the basement.

21 MR. SIKDER: No, lowered the size
22 of the house.

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1 CHAIRPERSON JORDAN: Um-hum.

2 MR. SIKDER: We --

3 CHAIRPERSON JORDAN: But -- here's
4 the issue. We already have an application
5 pending on this property. You're saying this
6 is different because you lowered the basement
7 by how long? How much?

8 MR. SIKDER: No, I didn't say I
9 lowered the basement. I said I reduced the size
10 of the house by --

11 CHAIRPERSON JORDAN: By how much?

12 MR. SIKDER: -- by -- the
13 lengthwise, we reduced -- I cannot tell exactly
14 how many feet, but I have the papers here. A
15 few feet.

16 And then instead of three floors,
17 we -- we were now -- we are now proposing two
18 floors plus basement. So, above the ground is
19 only two floors.

20 CHAIRPERSON JORDAN: Wasn't that
21 the same in the last one?

22 MR. SIKDER: No, last one was three

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1 floors.

2 CHAIRPERSON JORDAN: The last one
3 -- no, the last application you submitted to
4 this Board was three floors?

5 MR. SIKDER: Three floors.

6 CHAIRPERSON JORDAN: Do you have
7 the record? Does OP have the records from the
8 last application? Because that's --

9 MR. JESICK: I don't have the record
10 in front of me, but I can maybe for the sake
11 of expediency clarify. When the last case was
12 originally submitted, it was a two-story, but
13 when it came before the Board, it had been
14 amended to be a three-story structure.

15 This is a similar footprint, but
16 he's created a basement now. So, it's two
17 stories plus a basement rather than three
18 stories.

19 CHAIRPERSON JORDAN: All right.
20 Just give me a second please. I'm going to pull
21 up the transcript. One second.

22 MR. MOY: While there's a pause, Mr.

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1 Chairman, if there's still interest, I'm pulling
2 that file 18205.

3 CHAIRPERSON JORDAN: Right. Thank
4 you. One second. We'll be right with you.

5 ZC VICE CHAIRMAN SCHLATER: Maybe
6 I can ask OP a question about the two different
7 applications. Is there any change in the
8 requested relief being asked for between the
9 two applications?

10 MR. JESICK: I believe the relief
11 is identical.

12 ZC VICE CHAIRMAN SCHLATER: So, the
13 Applicant is asking for the exact same thing
14 from the Board in this application as they were
15 in the previous application that was denied?

16 MR. JESICK: He's asking for the
17 same relief. Yes.

18 ZC VICE CHAIRMAN SCHLATER: And --
19 okay. I think that's I need to know. It seems
20 to me we shouldn't have set up a system where
21 if you're denied you can come back and ask for
22 the same relief. Just keep repeatedly coming

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1 through to the BZA. It occupies resources in
2 a way that I don't think is productive.

3 CHAIRPERSON JORDAN: And
4 especially if it's within a year period of time.

5 That is what my belief in this matter is also.

6 Any other Board Member have a
7 thought about this?

8 Then although I could rule this out
9 of order on my own and I guess the proper way
10 would be to find this application to be out of
11 order. Would that be the proper way, Mr.
12 Schlater? Here let's -- then the proper way
13 would be to dismiss it. I would certainly
14 entertain a motion that we dismiss this
15 Application 18341 as being the exact same
16 application for the same relief that's requested
17 in 18205.

18 ZC VICE CHAIRMAN SCHLATER: Mr.
19 Chairman, I'll make that motion to dismiss Case
20 Number 18341, Application of M. Sikder.

21 CHAIRPERSON JORDAN: Need a second.

22 MEMBER MacMURRAY: Mr. Chairman, I

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1 second the motion.

2 CHAIRPERSON JORDAN: There's a
3 motion made and seconded that we dismiss
4 Application 18341 as being filed within a year's
5 period of time of Application 18205. Thus, both
6 requesting the same relief on the same property.

7 Any unreadiness? All those in favor signify
8 by saying aye.

9 MEMBER MacMURRAY: Aye.

10 CHAIRPERSON JORDAN: Aye.

11 ZC VICE CHAIRMAN SCHLATER: Aye.

12 CHAIRPERSON JORDAN: Those opposed
13 nay?

14 MEMBER HINKLE: Nay.

15 CHAIRPERSON JORDAN: All right.

16 The motion carries. Mr. Secretary.

17 MR. MOY: Mr. Chairman, staff would
18 record the vote as 3-1-1. This is on the motion
19 of Mr. Schlater to dismiss the application.
20 Second the motion Ms. MacMurray. Also in
21 support of the motion Chairman Jordan. We have
22 one opposed which is Mr. Hinkle and we have Ms.

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1 Sorg not present not voting. So, again, the
2 final vote to dismiss the application is 3-1-1.

3 CHAIRPERSON JORDAN: Thank you.
4 This matter is dismiss.

5 MR. WALLS: Thank you, Mr. Chair and
6 Members of the Board.

7 CHAIRPERSON JORDAN: I'm sorry.
8 Thank you for coming down. Thank both of you
9 for being here and the same thing for OP.

10 MR. MOY: The next and third
11 application for the morning session before the
12 Board is Application Number 18342. This is the
13 application of Mohammad Sikder pursuant to 11
14 DCMR 3103.2 for variances from the lot area and
15 lot width requirements under Subsection 401 to
16 allow the construction of a one-family detached
17 dwelling in the R-1-B District at premises 2425
18 Franklin Street, N.E. Property located in
19 Square 4265, Lot 821.

20 CHAIRPERSON JORDAN: Okay. In
21 this Case 18342, would you introduce yourself
22 please?

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1 MR. SIKDER: Good morning, Chairman
2 and Board Members.

3 My name is again Mohammad Sikder.

4 CHAIRPERSON JORDAN: Thank you, Mr.
5 Sikder. Where we are in this case.

6 You're looking to construct a
7 three-story one-family detached dwelling.
8 Correct?

9 MR. SIKDER: Correct.

10 CHAIRPERSON JORDAN: And you're
11 asking only for -- you're asking for variance
12 relief from Section 401.1.

13 MR. SIKDER: Correct.

14 CHAIRPERSON JORDAN: Anybody have
15 questions?

16 If you would, would you address for
17 us before you do your presentation, if any --
18 it's going to be further necessary on how this
19 property is exceptional and how you meet that
20 standard?

21 MR. SIKDER: Yes, this property
22 unique by exceptional narrowness, shallowness,

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1 shape, topographic or other extraordinary and
2 exceptional situation. Test number one.

3 CHAIRPERSON JORDAN: Okay. All
4 right. Can you tell me some information? Give
5 me some facts that shows that this property is
6 exceptional in comparison to the other
7 properties say in the neighborhood by its shape,
8 narrowness, et cetera?

9 MR. SIKDER: Right. For instance,
10 the -- the right side of this lot, this is
11 existing house and the left-hand side, there's
12 another lot.

13 Where I -- I sent a letter if they
14 want to sell their property or they can buy my
15 property in order to make it bigger size of the
16 lot. But, they did not respond. So, on the
17 right-hand side, I have no way I can -- this
18 lot cannot be extended on the right-hand side
19 and the left-hand side, there's another existing
20 lot.

21 CHAIRPERSON JORDAN: So, I
22 understand. It sounds like that's getting to

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1 some practical difficulties, but where is the
2 property exceptional?

3 MR. SIKDER: Exceptional means that
4 it -- it cannot be -- that this is the -- when
5 this --

6 CHAIRPERSON JORDAN: In reviewing
7 your application, maybe I can help you and the
8 reason why I ask this question, in your
9 application, you repeat that all the lots --
10 in the subject area, many of the lots are the
11 same or similar and they are less than 5,000
12 square feet of lot area and have widths less
13 than 50 feet and that's what you have in your
14 application, what you cite.

15 That tells me, and I don't know about
16 the other Board Members, that this property is
17 similarly situated to the other properties in
18 the area.

19 So, I guess what I'm asking you is
20 for something more -- or is there something else
21 you might want to say about that? How this
22 property is exceptional.

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1 Because if we read your application,
2 the statement I just read is something that
3 generally you had in your application and your
4 statement about the uniqueness of the property.

5 That being that it's a less than 5,000 square
6 feet lot area. Although, you also say that many
7 of the lots in the area are that size and widths
8 are less than 50 feet as required in R-1.

9 MR. SIKDER: Correct. So, that's
10 the -- that's the fact that our lots in this
11 area which is -- most of the lots are -- it
12 conforms to the zoning requirements, but still,
13 there are a few lots does not conform. So, my
14 lot is one of those that it cannot be done any
15 other way without variance. We cannot build
16 the house.

17 CHAIRPERSON JORDAN: Okay. Okay.
18 Go ahead and proceed if you want to present
19 anything to the Board. You can present your
20 case please.

21 MR. SIKDER: Yes, we will -- this
22 vacant lot -- lot of 40-foot width and

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1 3600-square-foot lot area which is located at
2 2425 Franklin Street, N.E.

3 The site is currently zoned in
4 R-1-B. Designed to -- and it -- and it does
5 not conform with the lot area and lot width which
6 requirement -- minimum requirement is 5,000
7 square feet of the lot area and 50-foot width
8 of the -- lot width. We have 3600 square feet
9 and 40-foot lot width. Let us in for this
10 variance.

11 This property unique by these
12 exceptional narrowness, shape and exceptional
13 situation or condition.

14 When the Zoning Act of 1958 was
15 adopted, mostly all of the lots on the subject
16 square and many other lots in the area were
17 adopted with less than 5,000-square feet of lot
18 area and lot width narrower than 50 feet required
19 in R-1-B District.

20 Apparently, our -- without variance
21 relief from the required lot dimension, the
22 subject property cannot be developed for its

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1 intended purpose.

2 By reason of the aforementioned
3 unique or exceptional condition of the property,
4 the strict application of the zoning regulation
5 will result in peculiar and exceptional
6 practical difficulties or exceptional and undue
7 hardship upon the owner of the property.

8 We have a practical difficulty
9 because of the lot area and lot width cannot
10 be expanded because the adjacent -- the
11 right-hand side lot having a property and the
12 left-hand side lot cannot be combined either
13 and we don't believe the property would be
14 incapable of being developed.

15 The variance will not cause
16 substantial detriment to the public good and
17 will not impair the intent, purpose and
18 integrity of the Zoning Plan as embodied in the
19 zoning regulation and map.

20 The requested variance could be
21 granted without substantial impact to the zoning
22 regulations and public good. The propose

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1 three-story structure would not limit the light
2 and air to the adjacent properties or to other
3 buildings in the neighborhood.

4 Yes, that will end my presentation.

5 CHAIRPERSON JORDAN: All right.
6 Thank you. Anyone have any questions for the
7 Applicant?

8 Let me ask you -- oh, go ahead.

9 ZC VICE CHAIRMAN SCHLATER: Has
10 there ever been a building located on this lot?
11 Do you know? Has there ever been a home on
12 the lot?

13 MR. SIKDER: Not in my knowledge.

14 ZC VICE CHAIRMAN SCHLATER: Okay.

15 CHAIRPERSON JORDAN: Did you
16 present this to the ANC and do a presentation
17 to the ANC?

18 MR. SIKDER: Yes, I started -- I
19 started talking with -- I mean I started emailing
20 to the ANC Board Members and also I called them
21 to that telephone number. I got it from the
22 website and that phone number goes to some place,

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1 a fire department or some Salvation Army.

2 CHAIRPERSON JORDAN: Wait a minute.

3 You got a telephone number from where?

4 MR. SIKDER: From the ANC DC
5 website.

6 CHAIRPERSON JORDAN: Okay. And
7 then you called the number and it went to a fire
8 department?

9 MR. SIKDER: It went to the -- not
10 fire. The Salvation Army.

11 CHAIRPERSON JORDAN: Salvation
12 Army. Did you make a request to the ANC to meet
13 and discuss this?

14 MR. SIKDER: Yes, I emailed to them.

15 CHAIRPERSON JORDAN: You emailed to
16 them?

17 MR. SIKDER: Emailed to them.
18 Right. And I never got any response back.

19 CHAIRPERSON JORDAN: Okay. Any
20 other questions of the Applicant?

21 ZC VICE CHAIRMAN SCHLATER: You
22 state that the lot was created before 1958.

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1 Do you know when it was created?

2 MR. SIKDER: No, I meant -- I meant
3 in general. I didn't mean that -- that
4 particular this lot. I -- I did not verify when
5 it was created.

6 ZC VICE CHAIRMAN SCHLATER: Is
7 there any information on that?

8 CHAIRPERSON JORDAN: So, begs the
9 question then how do you know it's built before
10 -- that 1958 -- there hasn't been any changes
11 since 1958? Is that kind of what you're getting
12 at?

13 ZC VICE CHAIRMAN SCHLATER: There
14 seems to be references in the record that, you
15 know, this is a pre-1958 lot.

16 CHAIRPERSON JORDAN: Right.
17 Right.

18 ZC VICE CHAIRMAN SCHLATER: So, I'd
19 just like some --

20 CHAIRPERSON JORDAN: Yes, I
21 understand.

22 ZC VICE CHAIRMAN SCHLATER: --

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1 evidence of that.

2 CHAIRPERSON JORDAN: Yes, he's
3 asking how do you get there? How do you make
4 that assumption?

5 ZC VICE CHAIRMAN SCHLATER: Because
6 I guess the concern is if you're a property owner
7 and you start chopping up your property into
8 substandard lots, you wouldn't want people
9 coming in and then subsequently asking for
10 relief.

11 MR. SIKDER: Yes, I did not
12 subdivide this lot. It is not being --

13 ZC VICE CHAIRMAN SCHLATER: I'm not
14 saying you did necessarily, but somebody else
15 might have since 1958.

16 CHAIRPERSON JORDAN: Yes,
17 understand. Good point. Um-hum.

18 MR. SIKDER: It -- but, what I meant
19 that is not necessarily this lot was created
20 before 1958, but what I meant that the law when
21 it was created. But, later on, I mean maybe
22 -- maybe it was created before 1958. But,

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1 simply I do not know. I did not inquire that.

2 CHAIRPERSON JORDAN: Right. Any
3 other questions?

4 Maybe we can go to Office of Planning
5 and maybe they can help clear up some of this
6 for us.

7 MR. JACKSON: All right.

8 CHAIRPERSON JORDAN: Um-hum.

9 MR. JACKSON: Arthur Jackson, D.C.
10 Office of Planning.

11 Did you want me to go through my
12 presentation first or --

13 CHAIRPERSON JORDAN: Whichever.
14 Yes, whatever your presentation is. Um-hum.

15 MR. JACKSON: All right. Then we
16 looked at the property and the square and we
17 note that we are talking about two 20-foot lots.

18 We have a tax lot of course, but the actual
19 record lots are two 20-foot lots.

20 The surrounding properties are
21 developed with individual 20-foot lots and as
22 you note on the Office of Planning's map, they're

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1 actually some cases where there are buildings
2 sitting on two 20-foot lots -- record lots
3 although it's on a tax lot.

4 I point to the neighboring property
5 to the west on Franklin Street. You see the
6 building exists on two lots and then the next
7 building down exists on two lots.

8 The uniqueness of this property is
9 that -- reading more of the circumstances around
10 it is the size. Because if you go all the way
11 around the square, there are a number of
12 20-foot-wide record lots, but the majority of
13 them are developed residences or there are a
14 number that are included in this parking lot
15 which apparently is owned by the -- the property
16 is owned by the Salvation Army.

17 But, in any case, that the -- this
18 is the one -- this appears to be one of the few
19 pairings of lots that would be suitable -- that
20 could be developed because the other 20-foot
21 lots already have buildings on them. So, this
22 is the one that -- this is one of the few that

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1 could be developed and in doing so, he has the
2 following guidance in the zoning regulations
3 in that he'll have to combine this lot into one
4 record lot. He had a building permit.

5 Okay. But, he is unable to combine
6 three of the lots. Only has two available.
7 If he had one more, he could make a lot that
8 would be legal according to our current
9 regulations. But, he cannot get another lot.

10 We asked the Applicant if he had
11 tried to contact the owners of the adjacent
12 property to the right. He wasn't able to do
13 that. He obviously can't buy the property from
14 the -- to the left. Well, not obviously, but
15 it's unlikely the gentleman would sell one of
16 his lots under his house. So -- lady or
17 gentleman.

18 So, another complication is that one
19 of the record lots has been developed on. That
20 is, it has a garage on it. Under normal
21 circumstances, if he had 20 -- if he was within
22 20 percent of requirement, he could build if

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1 he combined the two lots. But, that's not
2 available either because the property's been
3 developed on.

4 We did not examine whether or not
5 the lots had been created prior to 1958, but
6 it was unlikely given the pattern of development
7 in the area and the fact that these -- this is
8 a series of 20-foot lots. These wouldn't have
9 been created after 1958 because it would have
10 been a massive violation of our zoning
11 regulation and I don't think that would have
12 occurred.

13 So, I think it's -- we could take
14 it on good conscious that these lots were created
15 prior to 1958.

16 Of course, R-1-B lots would not be
17 allowed to be as small as these.

18 So, given the circumstances which
19 is unusual for us, we accept the fact that
20 someone is trying to build on these irregular
21 lots. It really is a unique circumstance in
22 this neighborhood because the others are already

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1 built on and it's -- the practical difficulty,
2 of course, is that it cannot be done under
3 current regulations because they're too small.

4 If they had been -- if a house already existed
5 there and they wanted to expand it, 223 would
6 kick in. But, we have no other flexibility in
7 the regulations to allow for this circumstance.

8 So, he's going to be taking two
9 record lots, combining them into one to
10 construct and he has no additional property he
11 can acquire to make this addition and it's a
12 practical matter.

13 So, given that practical
14 difficulty, given the fact of the unique
15 characteristic of actually building on -- trying
16 to build on one of these lots and the fact that
17 the impact of having -- allowing the
18 construction given the fact that he's meeting
19 the yard setbacks and meeting the lot occupancy
20 and with his agreement to the OP recommendation
21 that he shift the parking pad further back so
22 that it is not so close to the street -- the

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1 thought there was it would just be good if you
2 didn't have cars poking out beyond the porch
3 or visible beyond the porch. That's why we
4 asked for the parking pad to be shifted further
5 back. We think that this is the appropriate
6 improvement.

7 It's consistent with the building
8 regulations in terms of the use that was intended
9 by the R-1-B District and with the adjustment
10 and the vehicle location, we think it would not
11 be detrimental at all to the community.

12 That's a brief summary of the Office
13 of Planning's report and we're available to
14 answer questions.

15 CHAIRPERSON JORDAN: My first
16 question. There are other lots similar size
17 that have been built on.

18 MR. JACKSON: Yes, well, the
19 neighboring lots to the east and west -- to the
20 west have been built on, but those appear to
21 be very old homes. Those are not new dwellings
22 and we don't see -- I don't think we've -- I

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1 don't -- I didn't see any other requests for
2 relief for properties that are built on that
3 neighborhood.

4 CHAIRPERSON JORDAN: Okay. And
5 the other question is you had -- reading the
6 OP report, there was some reservations about
7 not really granting this at this time because
8 you recommended that some other things happen
9 before we kind of approve this. Am I correct
10 or incorrect?

11 MR. JACKSON: I'm not sure what
12 you're referring to. Oh, the modification of
13 the plan. We asked them to change the plan to
14 shift the parking pad back and he agreed to do
15 that. I'm not sure if that's been submitted
16 to the record yet.

17 CHAIRPERSON JORDAN: You have
18 copies of it?

19 MR. JACKSON: I didn't receive a
20 copy.

21 CHAIRPERSON JORDAN: So, you don't
22 know if it's been done.

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1 MR. JACKSON: Well, I saw the email
2 he sent to his architect to make the change,
3 but I didn't see a copy of the revised plan.

4 And again, if you look at the site
5 plan for the -- that was submitted, the parking
6 pad for the lot is situated so that a car parked
7 there would be between the porches of the
8 neighboring buildings.

9 CHAIRPERSON JORDAN: Okay.

10 MR. JACKSON: And we think it would
11 be more appropriate that it be shifted back so
12 as not visible from the street. We also note
13 that none of the houses on the square have
14 parking in the rear of the property except for
15 obviously the neighboring property owner
16 apparently was parking his vehicle in the rear
17 yard of a property that didn't belong to him
18 or her.

19 So, we're not sure. But, none of
20 the houses along that street frontage have any
21 garages in their rear yard and parking is allowed
22 in the side yard under our zoning regulations.

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So, we just think it would be prudent to move it back so it's less visible from the street.

ZC VICE CHAIRMAN SCHLATER: There's an existing garage on the property. Correct?

MR. JACKSON: Yes.

ZC VICE CHAIRMAN SCHLATER: Who's using that garage?

MR. JACKSON: I'm not sure.

ZC VICE CHAIRMAN SCHLATER: The adjacent property or --

MR. JACKSON: It appears -- well, just from the look of it, we think the neighbor to the west put their garage on it. But, there's -- but, we have no knowledge of who it belongs to.

Of course, now, the property belongs to the Applicant. So, it's his garage.

CHAIRPERSON JORDAN: Yes.

MEMBER HINKLE: If I could ask the Applicant, the site plan that I have does not

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1 include the garage. Is that the plan? Is to
2 demolish the existing garage on the property?

3 MR. SIKDER: I mean yes. I mean
4 that's not -- I mean that's -- probably will
5 demolish or I will keep it. I mean don't know
6 yet.

7 ZC VICE CHAIRMAN SCHLATER:
8 Wouldn't that impact lot occupancy if he kept
9 it?

10 MR. JACKSON: Yes.

11 ZC VICE CHAIRMAN SCHLATER: So, I
12 don't think that probably is an acceptable
13 answer.

14 MR. JACKSON: Well, I should
15 clarify. They're allowed up to 40 -- he's
16 allowed up to 40 percent lot occupancy.

17 ZC VICE CHAIRMAN SCHLATER: Right.

18 MR. JACKSON: He's not asking for
19 lot occupancy relief. So, he has 7 percent to
20 work with.

21 Now, if he -- as long as he did --
22 kept within the 40 percent, he can -- he can

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1 add accessory structures in the back. Now, if
2 there's -- but, he's not asking for relief for
3 that. So --

4 ZC VICE CHAIRMAN SCHLATER: It
5 looks like more than 7 percent.

6 MR. JACKSON: Right. Well, he's
7 got to deal with that between now and permit.

8 ZC VICE CHAIRMAN SCHLATER: But,
9 doesn't he have to build according to the plans
10 that he submits to the BZA?

11 MR. JACKSON: Right. At this
12 point, they're not shown. So, it would have
13 to be demolished unless he wanted to modify his
14 plans.

15 MR. SIKDER: Right. I mean there's
16 some -- I mean if it does not comply, we will
17 demolish it. Is not that we are going to keep
18 it.

19 ZC VICE CHAIRMAN SCHLATER: Based
20 on the plans you've submitted today, it would
21 have to be demolish. Yes.

22 MR. SIKDER: Okay. We'll demolish

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1 it. That's fine.

2 CHAIRPERSON JORDAN: Anybody else
3 questions?

4 Let me ask. I guess the question
5 goes to -- well, a couple of things.

6 Let me ask the Applicant.
7 Regarding the purchase of the lot next door,
8 can you tell me -- do you have anything to show
9 that you tried to purchase the lot next door?

10 MR. SIKDER: Sure. I sent -- I sent
11 the letter to -- to you that I sent a letter
12 certified -- I sent a certified copy to the
13 neighbor. Yes.

14 CHAIRPERSON JORDAN: And if I'm
15 understanding right, Mr. Jackson, there is a
16 lot that's available next door that's vacant
17 that potentially could be --

18 MR. JACKSON: There's a parking
19 lot.

20 CHAIRPERSON JORDAN: Parking lot
21 rather.

22 MR. JACKSON: Right. But, if you

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1 note on our plan, it appears to be just made
2 up -- again, it's one of those where they've
3 never consolidated all the lots. So, it's just
4 a series of 20-foot lots that they're covering
5 with a parking lot.

6 CHAIRPERSON JORDAN: Series.
7 Okay.

8 MR. JACKSON: Right.

9 CHAIRPERSON JORDAN: Okay. So,
10 have you found that please?

11 MR. SIKDER: Sure.

12 CHAIRPERSON JORDAN: If you would
13 give it to -- well, if give it to the secretary
14 please when you -- well, while we're waiting
15 on that, let me ask another question.

16 Now, in reading the OP report, we
17 kind of said there's no detriment to the public
18 good, but it kind of like leapfrogged there.
19 What was your basis of saying there's no
20 detriment to the public good?

21 MR. JACKSON: Well, the -- of
22 developing this? Well, he's developing a pair

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1 or inconsistent lots with one-single family
2 dwelling in a single-family neighborhood. The
3 design is acceptable. The scale appears to be
4 acceptable. It's within the heights allowed
5 in the zoning district. So, in every standard
6 that we have in our zoning regulations now in
7 terms of bulk and height and area, he meets it.

8 The lot is the issue. The lot is
9 too small. The lot is narrow.

10 So, if he's developing it for a use
11 that's allowed in the district and it doesn't
12 detract from the neighborhood, we don't think
13 it's detrimental.

14 CHAIRPERSON JORDAN: And we don't
15 have any reports from the ANC. You were telling
16 us -- what did you do with the ANC? Did you
17 contact the ANC?

18 MR. SIKDER: Yes, I did.

19 CHAIRPERSON JORDAN: And?

20 MR. SIKDER: I wrote an email and
21 I call to it and I never got any response. I
22 called all the numbers there. I called and

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1 nobody responded and particular, this Board --
2 this ANC, I think and I call particular that
3 number and it said it's Salvation Army and left
4 I mean multiple message. Nobody responded.

5 CHAIRPERSON JORDAN: But -- and
6 that's -- and I just wanted to note and not that
7 we have anything that shows anything to the
8 contrary, but we have the same problem in your
9 other application. The same kind of thing
10 happened to the ANC in Ward 7 is happening to
11 the ANC in Ward 5. But, we also send notice
12 to the ANC. Give them notice of the process.
13 So, that --

14 MR. SIKDER: Yes, I have a record.
15 I know that I'm just saying --

16 CHAIRPERSON JORDAN: No, I'm saying
17 that the Office of Zoning also sends a notice
18 to the ANC and we have nothing.

19 MR. SIKDER: Right. They won't
20 respond. I mean how like -- how like -- what
21 could be done? I mean it's not like -- I
22 am --

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1 CHAIRPERSON JORDAN: I understand.

2 MR. SIKDER: -- at their mercy.

3 CHAIRPERSON JORDAN: Now, when you
4 sent the letter to the record owner of the lot
5 next door, you got a reply back or no reply back?

6 MR. SIKDER: No reply back.

7 CHAIRPERSON JORDAN: Okay. All
8 right. I don't have any other questions. Is
9 there any report from Office of Transportation,
10 Department of Transportation?

11 MR. JACKSON: Yes, they sent a
12 report.

13 CHAIRPERSON JORDAN: Expressed no
14 opposition, no objection?

15 MR. JACKSON: No, and we
16 specifically asked them because of the -- well,
17 because of their policy of looking at the impacts
18 of curb cuts in the neighborhood, in the
19 community, but their report dated April 13th
20 said that they had no objection to variances
21 and saw no impact on transportation that were
22 as a result of the --

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1 ZC VICE CHAIRMAN SCHLATER: Okay.
2 It's just an interesting point. If you look
3 at the map on page 3 of your report, there is
4 an existing curb cut into that property.
5 Correct?

6 MR. JACKSON: Right. Well, the
7 issue here is that because they're going to be
8 consolidating the lots --

9 ZC VICE CHAIRMAN SCHLATER: Yes.

10 MR. JACKSON: -- making a new lot,
11 they treat it as a new curb cut.

12 ZC VICE CHAIRMAN SCHLATER: I
13 understand that, but it seems to me that there
14 was probably a house on here at one point.

15 MR. JACKSON: Oh, right there. I
16 see what you're talking about.

17 ZC VICE CHAIRMAN SCHLATER: Because
18 I mean there's a curb cut going into the lot.

19 MR. JACKSON: Um-hum. That's
20 true. But, I'm --

21 ZC VICE CHAIRMAN SCHLATER: I mean
22 I think it would be helpful to have. I mean

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1 nobody knows I guess the answer to that, but
2 --

3 CHAIRPERSON JORDAN: Yes, you
4 clearly see a curb cut.

5 MR. SIKDER: Yes. Yes, there is a
6 curb cut.

7 MR. JACKSON: Well, now, remember
8 too that if you'll note the driveways all look
9 very new, but the problem is by doing -- okay.

10 I'm just putting this in context. The problem
11 is by doing it when they go into an area and
12 they upgrade the streetscape, see the street
13 is new and the curb cuts are new. If there was
14 anything that looked like a curb cut there, they
15 probably built a -- they probably rebuilt it.

16 Okay. Now, I -- that has been the case in a
17 number of cases that I've run across recently.

18 But -- and again, we did raise this
19 issue specifically with the Department of
20 Transportation and they were considering it.
21 The reason they were reviewing it was because
22 it was a new -- it's going to be a consolidation

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1 creating a new lot and so, the issue comes up
2 again. But, that's just the context in which
3 we looked at it.

4 CHAIRPERSON JORDAN: All right.
5 Any other questions by anyone of Office of
6 Planning?

7 Mr. Sikder, if there is anything
8 else you want to tell the Board before we move
9 into our aspect of deliberating.

10 MR. SIKDER: Simply, I'd like to say
11 that, you know, I mean I would appreciate you
12 people granting me this to build a house there.
13 Thank you.

14 CHAIRPERSON JORDAN: Okay. Thank
15 you.

16 All right. The Board's comfortable
17 with deliberating and discussion? Okay.

18 Does anyone have anything they
19 wanted to say about this application? Mr.
20 Hinkle.

21 MEMBER HINKLE: Mr. Chairman, I
22 think I'm in agreement with the analysis that

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1 the Office of Planning put forward.

2 You know, while a nonconforming lot
3 really doesn't constitute an exceptional
4 condition, I think the condition that it's bound
5 by some other lots and as we see in this letter
6 that was just provided to us, the Applicant has
7 made an effort to at least purchase an adjacent
8 lot to make it conforming, but wasn't
9 successful. So, I think he's really limited
10 in terms of opportunities here, you know, and
11 without the requested relief, it really would
12 remain somewhat undevelopable.

13 So, I'm in support of this
14 application.

15 I think we could vote on this with
16 the condition that some revised plans are made
17 in accordance with the recommendation by the
18 Office of Planning in terms of moving the parking
19 pad back behind the location of the porch and
20 if the Applicant's amenable to that which I
21 believe he is, you know, I can certainly make
22 a motion to support this application with that

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1 condition.

2 CHAIRPERSON JORDAN: Anyone else
3 have a thought? Mr. Schlater.

4 ZC VICE CHAIRMAN SCHLATER: Mr.
5 Chairman, I think for the most part the proposed
6 project is one that is in keeping with the
7 neighborhood. It meets all of the requirements
8 save for the lot width and the lot area
9 requirements. So, I do think it's a good
10 project.

11 I am, however, concerned about the
12 precedent that this Board sets with respect to
13 how it determines whether a property is unique.

14 I think, you know, my position is just because
15 a lot is substandard does not make it unique
16 and I think all of the arguments I've heard to
17 buttress the uniqueness argument are sort of
18 building off of the fact that this is substandard
19 lot.

20 So, where I come down, I haven't
21 heard enough evidence and I haven't seen enough
22 evidence in the record to establish uniqueness

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1 in this case and I guess my opposition to it
2 is not particularly linked to this particular
3 project which I think is a good one and you could
4 put a home on their comfortably.

5 So, I think with respect to the
6 remaining prongs of the substantial detriment,
7 I think you can -- you can certainly meet that
8 prong and there is certainly practical
9 difficulties. The Applicant has tried to
10 acquire the adjacent lot. You know, made a good
11 faith effort there and is certainly trying to
12 make this work.

13 So, I think it comes down to the
14 uniqueness. I'm not there yet. So, that's
15 where I stand.

16 CHAIRPERSON JORDAN: Well, you
17 really helped me. No, you didn't because I'm
18 right down the middle on this.

19 As I said earlier, I thought there
20 were some issues with uniqueness, but my gut
21 is to -- but, also I think that Office of Planning
22 probably saved this application for me by the

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1 fact that it pointed out the differences of the
2 other lots and how they were built upon that
3 would make this lot if anything unique because
4 of the width size of it and the other issues
5 about -- well, the width size and how others
6 have already done some things and this is kind
7 of -- I don't want to use the word landlocked,
8 but it's landlocked in regards to that.

9 So, let me hear from you, Ms.
10 MacMurray.

11 MEMBER MacMURRAY: Thank you, Mr.
12 Chairman.

13 Again, I do think I appreciate the
14 presentation from Office of Planning because
15 they did point out some of the attributes that
16 weren't readily apparent in terms of
17 understanding the size of the lot and why they
18 couldn't just, you know, build a house, whatever
19 they needed to do.

20 My concern also stems to the
21 existing garage and whether or not it will
22 continue to stay on the property or what the

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1 plans would be for that particular property.

2 In conformance with negotiating, I
3 would kind of like to see the owner try to see
4 if they could acquire or at least get a response
5 back from the other properties before maybe
6 approving. Maybe we could just pending and give
7 the property owner maybe another couple of
8 weeks. Then see if that remedy's -- before we
9 go forward with this.

10 CHAIRPERSON JORDAN: And I
11 appreciate that. But, the other thing, you
12 can't force people to respond and putting that
13 burden on the Applicant may not be reasonable.

14 So, what's the feel of the Board?
15 Anyone? Mr. Hinkle.

16 MEMBER HINKLE: Yes, Mr. Chairman,
17 I would make a motion to move this application
18 forward and -- with the condition that we receive
19 revised plans showing the parking pad moved
20 further back into the lot behind the front porch.

21 CHAIRPERSON JORDAN: Is there a
22 second or anyone else that --

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1 ZC VICE CHAIRMAN SCHLATER: I'm
2 just trying to get some clarification and I can
3 be swayed on this.

4 Are we saying that if you're asking
5 for lot width relief, you can say the property
6 is unique because it's not wide enough?

7 Because it seems to me that's just
8 stating the obvious. So, I'm trying to figure
9 out what is the unique aspect of this lot.

10 MEMBER MacMURRAY: I think my
11 understanding of the uniqueness of the lot is
12 from historical evidence of how this
13 neighborhood was developed. Everybody had the
14 two lots and they would develop.

15 But, in this situation, the two lots
16 are not available for the Applicant to continue
17 to build in conformity with the rest of the
18 neighborhood.

19 So, the width is not the uniqueness.
20 It's the location of this particular width.

21 ZC VICE CHAIRMAN SCHLATER: But, if
22 you look at the two lots immediately to the west

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1 of this particular one, they're in the exact
2 same configuration. So, it's the opposite of
3 unique. It is the same as the two lots next
4 to it.

5 But, could you reason that it is
6 unique because those lots actually have an
7 existing structure and this lot does not and
8 without this relief, this lot would remain
9 vacant and unusable.

10 I guess I'm having a hard time saying
11 this lot is unique compared against the ones
12 adjacent to it. I think I could make the
13 argument that this square has developed -- was
14 developed in a unique way with these double lots.

15 They were narrower and it's different from
16 other squares around the city making it unique
17 in that respect.

18 But, I don't see how this lot is
19 unique from the other ones adjacent to it.

20 CHAIRPERSON JORDAN: Okay. All
21 right. We have a motion. It's still kind of
22 lingering. Need a second on it so we can get

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1 this thing moved one way or the other.

2 Is it going to die for a lack of
3 second? Going once. Going twice.

4 MEMBER MacMURRAY: Mr. Chairman,
5 I'll second the motion.

6 CHAIRPERSON JORDAN: All right.
7 We'll take some steps back and we go to the motion
8 made by Mr. Hinkle regarding approving this
9 application for the variance from -- and
10 contingent upon the filing of amended plans in
11 light of what OP has recommended and that we
12 would then grant this particular variance of
13 Section 401 regarding the property width, the
14 lot width. Excuse me. The lot width.

15 So, the motion is made and seconded.
16 All those in favor signify by saying aye.

17 MEMBER MacMURRAY: Aye.

18 MEMBER HINKLE: Aye.

19 CHAIRPERSON JORDAN: Those opposed
20 nay?

21 ZC VICE CHAIRMAN SCHLATER: Nay.

22 MR. SIKDER: All right. The motion

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1 carries. Mr. Secretary, poll the Board please.

2 And I'm at aye.

3 MR. MOY: Staff would record the
4 vote as 3-1-1. This on the motion of Mr. Hinkle
5 to approve the application for the variance
6 relief from lot area, lot width Section 401 on
7 the condition that the Applicant submit revised
8 plans that show that the -- on the site plan
9 that the parking pad is moved towards the rear
10 of the site, the garage is demolished, not on
11 the site plan. Second the motion Ms. MacMurray.

12 Also in support of the motion Chairman Jordan.

13 Opposed to the motion Mr. Schlater. Ms. Sorg
14 not present, not voting. So, again, the final
15 vote is 3-1-1.

16 CHAIRPERSON JORDAN: And, Mr.
17 Secretary, this will be from a summary order
18 seeing that there's no opposition and that we've
19 granted this in favor of the Applicant. So,
20 a summary order would be available.

21 MR. MOY: Yes, sir, and staff also
22 would assume that the order would not be issued

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1 until a satisfactory revised site plan is
2 submitted for the Board's review.

3 CHAIRPERSON JORDAN: Thank you.
4 Right.

5 MR. SIKDER: Any particular day I
6 have to -- within a week? I can do it by the
7 end of this week.

8 MR. MOY: Well, it's -- the ball's
9 in your court, sir.

10 MR. SIKDER: Sure.

11 MR. MOY: It depends on how fast you
12 want your summary order.

13 MR. SIKDER: I'll do that. Thank
14 you.

15 CHAIRPERSON JORDAN: All right. I
16 think we have one other item of business. I
17 think we have to -- thank you for coming. We're
18 finished with your business.

19 Let me just -- one second before we
20 do that.

21 Let's move to our next item of
22 business.

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1 As the Chairperson of the Board of
2 Zoning Adjustment for the District of Columbia
3 in accordance with Section 407 of the District
4 of Columbia Administrative Procedural Act, I
5 move that the Board of Zoning Adjustment hold
6 a closed emergency meeting today May 1st, 2012
7 within the next 15 minutes or so or as soon as
8 practicable for the purpose of seeking legal
9 advice from our counsel regarding Case Number
10 17109.

11 Is there a second?

12 ZC VICE CHAIRMAN SCHLATER: Second.

13 CHAIRPERSON JORDAN: Motion made
14 and seconded that we go into emergency closed
15 meeting.

16 Mr. Secretary, would you poll the
17 Board?

18 MR. MOY: Yes. When I call a Board
19 Member's name, if you would respond by yes or
20 no, yea or nay.

21 Mr. Schlater?

22 ZC VICE CHAIRMAN SCHLATER: Yes.

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1 MR. MOY: Chairman Jordan?

2 CHAIRPERSON JORDAN: Yes.

3 MR. MOY: Ms. MacMurray?

4 MEMBER MacMURRAY: Yes.

5 MR. MOY: Mr. Hinkle?

6 MEMBER HINKLE: Yes.

7 MR. MOY: And Ms. Sorg not present
8 not voting. So, the motion carries, Mr.
9 Chairman.

10 CHAIRPERSON JORDAN: Good. Thank
11 you. As it appears that the motion has passed,
12 I hereby give notice that the Board of Zoning
13 Adjustment will recess this proceeding today
14 May 1st to hold a closed emergency meeting in
15 the Office of Zoning Conference Room pursuant
16 to District of Columbia Administrative
17 Procedural Act.

18 A written notice will be posted in
19 this hearing room at this time.

20 So, we also will stand in recess
21 until the afternoon session and thank you.

22 (Whereupon, at 10:41 a.m., the

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1 hearing was recessed to reconvene this same
2 day.)
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1 on the table by the back door.

2 So, let's begin this afternoon's
3 hearing agenda. All individuals wishing to
4 testify today please rise to take the oath and
5 Mr. Secretary, would you administer that oath.

6 MR. MOY: Yes, Mr. Chairman. If
7 people would stand to take the oath.

8 Do you solemnly swear or affirm that
9 the testimony you're about to present in this
10 proceeding is the truth, the whole truth and
11 nothing but the truth?

12 You may consider yourself under
13 oath.

14 CHAIRPERSON JORDAN: Very good.
15 Thank you. And let's call the first case if
16 you would and if there's any preliminary
17 matters, we'll take it during that period of
18 time.

19 MR. MOY: Yes, thank you, Mr.
20 Chairman.

21 With that, good afternoon, Mr.
22 Chairman, Members of the Board.

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1 The first of two applications before
2 the Board in this afternoon's session the first
3 being Application Number 18343 and this is the
4 application of Katherine Klein and John Gomperts
5 pursuant to 11 DCMR 3103.2 for a variance from
6 the lot occupancy requirements under Section
7 403, a variance from the rear yard requirement
8 under Section 404 and a variance from the
9 nonconforming structure requirements under
10 Subsection 2001.3. This is to allow a rear deck
11 addition to an existing one-family row dwelling
12 in the D/R-3 District at premises 1618 22nd
13 Street, N.W. Property located in Square 2512,
14 Lot 23.

15 Excuse me, sir. If you could place
16 your exhibit boards directly in front of me.
17 It's because of the cameras.

18 CHAIRPERSON JORDAN: If you would
19 push the one button on the microphones please
20 and identify yourselves.

21 MR. MUSE: Hello.

22 CHAIRPERSON JORDAN: There you go.

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1 I heard you.

2 MR. MUSE: All right. I'm Stephen
3 Muse. I'm the Senior Principal at Muse
4 Architects in Bethesda, Maryland.

5 CHAIRPERSON JORDAN: Yes, and you
6 have -- anyone else testifying or witnesses for
7 you? No?

8 MR. MUSE: I think probably just me.

9 CHAIRPERSON JORDAN: Okay. All
10 right. Got to make sure. Do we have a letter
11 of authorization in this file?

12 MR. MOY: Maybe under Exhibit 6, Mr.
13 Chairman.

14 CHAIRPERSON JORDAN: Okay. Can't
15 find Exhibit 6. Okay. Do you see it, Cliff?
16 Do you have it? Okay. Cool. Great. Very
17 good. Okay. All right.

18 Let's proceed. There are some
19 procedural issues, Mr. Muse, I want to kind of
20 raise and discuss. Maybe you can help us before
21 we proceed. In the Applicant's statement, you
22 have an existing rear yard. The existing rear

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1 yard is 10 feet 2 inches and I think in the ZA
2 letter it says it's .67 feet. Which is it?
3 Do you -- can you tell us what the rear yard
4 -- um-hum. Yes.

5 MR. MUSE: Actually, it might be
6 helpful if Warren Short who's the project
7 architect also testifies. He'll know that
8 information.

9 CHAIRPERSON JORDAN: Your name
10 please.

11 MR. SHORT: My name is Warren Short
12 from Muse Architects in Bethesda, Maryland.

13 CHAIRPERSON JORDAN: Okay.

14 MR. SHORT: And the question is .67?

15 CHAIRPERSON JORDAN: What is the
16 dimensions? What is the rear yard?

17 MR. SHORT: It is 10 feet.

18 CHAIRPERSON JORDAN: It is 10 feet?

19 MR. SHORT: Um-hum.

20 CHAIRPERSON JORDAN: Yes, the
21 Zoning Administrator I think had something
22 different in his letter.

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1 MR. SHORT: We have found that the
2 -- well, in the -- let me clarify. It is 10
3 feet 3 inches from the rear yard to the face
4 of the building. Our deck area comes within
5 a fence wall. So, that is our, you know, 9 feet
6 7 inches.

7 CHAIRPERSON JORDAN: Okay. Great.
8 Let's proceed.

9 And this is an R-3 not an R-4.
10 Correct? District. Office of Planning, is
11 this an R-3 or R-4?

12 MR. MORDFIN: This is R-3.

13 CHAIRPERSON JORDAN: R-3. Because
14 at one point in your OP report, it makes
15 reference to an R-4. So, I just wanted to be
16 clear where we are.

17 MR. MORDFIN: I apologize. That's
18 an error.

19 CHAIRPERSON JORDAN: Okay. I got
20 it. Give us one second please.

21 We believe that the record is
22 probably pretty full and very full already as

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1 presented. That there is proper support for
2 this application.

3 You can present if you want to. We
4 don't necessarily find that you're going to --
5 anything's necessarily needed that we need from
6 you. So, it's your option.

7 MR. MUSE: I think with that I'd be
8 happy to pass. Just answer any questions that
9 you have.

10 CHAIRPERSON JORDAN: Anyone have
11 any questions for the Applicant?

12 Office of Planning, your
13 opportunity or we can stand by your report if
14 you wish.

15 MR. MORDFIN: Okay. Good
16 afternoon, Chair, Members of the Board.

17 I'm Stephen Mordfin with the Office
18 of Planning and the Office of Planning stands
19 on the record.

20 CHAIRPERSON JORDAN: Okay. The
21 record also includes a letter from ANC-2D that
22 voted with a quorum present and would be given

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1 great weight in support of this application.

2 I did not have in my file and I don't
3 know if we received one, a letter from Department
4 of Transportation, but there are also several
5 support letters received by neighbors and
6 neighboring property owners.

7 So, I guess we have no questions for
8 the Office of Planning because we already
9 covered that.

10 Anyone else? Anything?

11 Mr. Secretary.

12 MR. MOY: Yes, Mr. Chairman, for the
13 record, there is a filing from Department of
14 Transportation and it's identified as Exhibit
15 29.

16 CHAIRPERSON JORDAN: All right.

17 MR. MOY: And the letter states that
18 they've reviewed the Applicant's application
19 and DDOT has no objection to the requested
20 variance.

21 CHAIRPERSON JORDAN: Well, good.

22 Thank you.

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1 With that, I guess we can move to
2 deliberations. Good. You guys ready? No.
3 Let's do that. Let's do that.

4 All right. Based upon the record,
5 the Applicant has satisfied the burden of
6 proving the elements that are necessary to
7 establish the request in this case for a variance
8 from Section 403.2 lot occupancy, Section 404.1
9 rear yard and 2001.3 variance from the
10 nonconforming use requirement and the record
11 is pretty full based upon the information
12 already submitted and exhibits that are in the
13 file.

14 Based upon the record before the
15 Board having given great weight to also the
16 support and approval request of the Office of
17 Planning and also the support letters from the
18 ANC filed in this case, the Board concludes that
19 there exists an exceptional situation or
20 condition related to the property that creates
21 a practical difficulty for the property owners
22 to comply with the zoning regulations and that

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1 the relief can be granted without substantial
2 detriment to the public good and without
3 substantially impairing the zoning regulations
4 and the integrity of the zoning map.

5 As I said, I think great weight has
6 been given to the Office of Planning and the
7 ANC report and would conclude that this
8 particular property should be granted the relief
9 requested and I so move.

10 ZC VICE CHAIRMAN SCHLATER: Second.

11 CHAIRPERSON JORDAN: Motion made
12 and seconded to approve the variance request
13 based upon the record submitted. Any
14 unreadiness? All those in favor signify by
15 saying aye.

16 (Ayes.)

17 CHAIRPERSON JORDAN: Those opposed
18 nay. The motion carries. Mr. Secretary.

19 MR. MOY: Staff would record the
20 vote as 4-0-1. This on the motion of Chairman
21 Jordan to approve the application for variance
22 relief from lot occupancy, rear yard and

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1 nonconforming structure provisions. Second
2 the motion Mr. Schlater. Correct?

3 ZC VICE CHAIRMAN SCHLATER: Yes.

4 MR. MOY: Also in support of the
5 motion Ms. MacMurray and Mr. Hinkle.

6 CHAIRPERSON JORDAN: I'm calling
7 for a recount.

8 MR. MOY: I'm sorry.

9 CHAIRPERSON JORDAN: I'm calling
10 for a recount, Cliff.

11 MR. MOY: Oh.

12 CHAIRPERSON JORDAN: Three.

13 MR. MOY: Three. Oh, sorry. I'm
14 seeing double today. Very sorry. That would
15 be 3-0-2, all right, on the motion of Chairman
16 Jordan. Seconded Mr. Schlater. Also in
17 support of the motion, Ms. MacMurray. Ms. Sorg
18 and Mr. Hinkle not present. So, again, the
19 final vote is 3-0-2.

20 CHAIRPERSON JORDAN: And since
21 there is no opposition to this application and
22 the fact that this decision's in favor of the

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1 Applicant, then we believe that we can waive
2 the requirements of Section 3125 and issue a
3 summary order.

4 MR. MOY: Yes. Thank you, Mr.
5 Chairman.

6 CHAIRPERSON JORDAN: Thank you.

7 MR. MUSE: Okay. Thank you very
8 much.

9 MR. MOY: The next and final
10 application before the Board is Application
11 Number 18273-A. This was filed originally as
12 a request for a modification of approved plans
13 for Application Number 18273 of 1328 - 1330
14 Wisconsin Avenue, LLC, et al pursuant to 11 DCMR
15 3103.2 for a variance from the floor area ratio
16 requirements under Section 771, variance from
17 the lot occupancy requirements under Section
18 772 and a variance from the rear yard
19 requirements under Section 774 to allow rear
20 additions to existing buildings in the C-2-A
21 District at premises 1328, 1330, 1332 and 1336
22 Wisconsin Avenue, N.W. Property located in

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1 Square 1231, Lots 824 and 843.

2 CHAIRPERSON JORDAN: Great. Thank
3 you.

4 If you would move to the microphone
5 on this case please and identify yourselves.

6 MR. SULLIVAN: Thank you. My name
7 is Martin Sullivan with the law firm of Sullivan
8 & Barros.

9 MR. RAMEDANI: Sam Ramedani, 1328
10 - 1330 Wisconsin Avenue.

11 CHAIRPERSON JORDAN: And would you
12 say your name again and spell it for me please?

13 MR. RAMEDANI: Sam Ramedani
14 R-A-M-E-D-A-N-I.

15 CHAIRPERSON JORDAN: All right.
16 Thank you.

17 Before we begin, let me ask a
18 question. Was there a posting in this matter?

19 MR. SULLIVAN: Yes, there was.

20 CHAIRPERSON JORDAN: Okay. I
21 don't -- I didn't see an affidavit.

22 MR. RAMEDANI: Yes, I brought it.

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1 I have a copy of it, too.

2 CHAIRPERSON JORDAN: Would you get
3 that for us so we can supply it for the record?

4 Mr. Secretary, you don't have it in
5 your file because I don't. We didn't receive
6 it I don't believe. I wanted to make sure we
7 didn't.

8 MR. MOY: As a matter of fact, Mr.
9 Chairman, there's an affidavit that was posted
10 dated -- received April 25th and it's Exhibit
11 Number 53.

12 CHAIRPERSON JORDAN: Fifty-three?
13 I don't know if we had --

14 MR. MOY: And it appears to be
15 timely. I can pass this down to the Board.

16 CHAIRPERSON JORDAN: Thank you.
17 We have a copy. It just didn't make it into
18 our files, but they were in the files of the
19 Office of Zoning. But, not the ones that were
20 passed on.

21 Well, good. Now, the issue here is
22 one that we believe is requires the proof of

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1 as a use variance. I think we've read your
2 document in regards to the discussion and I think
3 you understand where we are and procedurally
4 where we are. So, I would want to tell you that
5 up front so that we are all on the same page.

6 Let me ask you. We think that the
7 record is full. There is some question though
8 regarding the undue hardship issue. Can you
9 elaborate and present on that please?

10 MR. SULLIVAN: Sure. Thank you,
11 Mr. Chairman, Members of the Board.

12 On the use variance issue and the
13 undue hardship, I would -- I think the quickest
14 thing to do would be to cite Office of Planning's
15 November 8 report in which they're describing
16 the condition of the property and in that, they
17 say that due to the inaccessibility of the rear
18 yard and the below grade pits that have
19 accumulated trash, weeds and vermin and the
20 configuration of the area back there, that any
21 use that requires adequate light, air or windows
22 is precluded and I can only assume they mean

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1 residential and that's what I would assert also.
2 Residential.

3 So, the condition of the yard, as
4 you can see from the picture, probably the center
5 row on the right, any residential use back there
6 wouldn't have light and air because it would
7 be facing a roof deck, a parking deck wall back
8 there and there's no --

9 CHAIRPERSON JORDAN: Excuse me.
10 Are you making reference to the top picture?
11 The middle one. Okay. You're pointing to the
12 --

13 MR. SULLIVAN: It would be -- the
14 addition's going to be in this area here and
15 not go above there. So, the addition's going
16 to be back here and because of the commercial
17 use in these buildings, the long-time commercial
18 use and the lack of access back there and the
19 narrow -- the narrow configuration of each of
20 these shops, it's impossible to have residential
21 use basically and I think that's what the office
22 of Planning stated in their November report.

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1 CHAIRPERSON JORDAN: It's
2 impossible? Impossible and practical
3 difficulties are different than making it an
4 undue hardship and --

5 MR. SULLIVAN: No, I -- well, it's
6 -- what the Office of Planning said was
7 precluded.

8 What the use variance test requires
9 under Gilmartin -- let me get the exact language.

10 Well, if I can paraphrase Gilmartin, it's that
11 the space cannot reasonably be used for any use
12 that's permitted in the zone district.

13 That's -- that's why the -- this
14 doesn't fit exactly the use variance test, but
15 I understand -- from the 2805 M Street case about
16 a year ago, I understand the Board's rationale
17 and it makes sense. It applies to the amount
18 that's over the 1.5 FAR and for that -- and for
19 this space -- because the FAR physically can
20 be permitted up to 2.5. So, we're not asking
21 for relief from that. We're asking for relief
22 that that .19 --

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1 CHAIRPERSON JORDAN: .19.

2 MR. SULLIVAN: -- can be used. I
3 would also note, too, that that's a small number
4 and the Board knows that the -- one of the factors
5 the Board can consider is the degree of the
6 variance requested and I think that comes into
7 play in this case as well.

8 So, I think saying it's impossible
9 would go beyond the undue hardship standard.

10 CHAIRPERSON JORDAN: What have you
11 done to try to make it work? When you -- saying
12 something's impossible to me is an ultimate
13 fact and not a pleading -- a regular fact that
14 leads into the ultimate conclusion and so, I
15 hear what you're saying and it's your case.
16 I mean we're not talking to -- and I guess we
17 could switch to OP, but I just -- what have you
18 done in regards to say that this is impossible
19 so we have something in the record.

20 MR. SULLIVAN: Okay. Well, I think
21 it's the -- the light and the air and the
22 accessibility or the lack of access to that.

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1 There's no separate entrance. Whereas on M
2 Street in a lot of cases, you have a commercial
3 building that already has access to an upper
4 floor from the outside so that you can have a
5 separate residential entrance. That's not here
6 and it's not reasonably possible to install that
7 here. That's half of it.

8 The other half is that you'd live
9 in a rat infested essentially back yard with
10 this parking deck wall towering over your
11 windows if you could have windows.

12 MEMBER MacMURRAY: I have one
13 question. Do you know historically for the
14 property was there ever a residential use?

15 MR. SULLIVAN: Not to our
16 knowledge. No.

17 CHAIRPERSON JORDAN: Where in the
18 -- you said November 8th Office of Planning's
19 memorandum. Is that what you referenced to?

20 MR. SULLIVAN: Yes.

21 CHAIRPERSON JORDAN: And where were
22 you? Where did you find that in Office of

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1 Planning's --

2 MR. SULLIVAN: Under -- on page four
3 under their analysis of prong one and two. The
4 exceptional situation resulting in a practical
5 difficulty.

6 Now, they're talking about
7 practical difficulty, but what --

8 CHAIRPERSON JORDAN: Exactly.

9 MR. SULLIVAN: -- what they've
10 described though is essentially saying that --
11 well, the sentence is exactly their sizes and
12 configurations and I would add also the lack
13 of access preclude the construction of
14 lower-level additions for any use that requires
15 adequate light, air or windows.

16 I would assert that residential is
17 that use that requires adequate light, air and
18 windows. So, if in their opinion and I agree,
19 residential use is precluded in this area. So,
20 it's because of the configuration.

21 CHAIRPERSON JORDAN: But, you know
22 and probably better than I there's a different

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1 standard between practical difficulty and undue
2 hardship. If it was, it would be the same thing
3 for an area variance and a use variance and I
4 guess what I'm saying is that we can look at
5 something and simply make that conclusion
6 without having the facts related to it.

7 For instance, what did we do to know
8 that that's not there? We had the architects
9 try this every which way. We did some
10 measurements and we tried to move it and couldn't
11 get it there and that's what I'm not hearing
12 in this testimony.

13 MR. SULLIVAN: Well, that's because
14 I think it's -- the situation with this property
15 even precludes such an analysis because you
16 can't get to it anyway. There's no separate
17 access and no matter what you put back there,
18 you're not going to have the light and air
19 necessary for a residential use.

20 And I think if I could rely back on
21 2805 M Street and that decision, where the
22 request was for a use of about the same amount

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1 of FAR on the second floor. That building was
2 two stories and on the first and second floor,
3 they reached their 1.5 FAR and they had .17 I
4 believe left over and in that case, the argument
5 which the Board accepted was that that .17 --
6 not the entire use, but that .17 could not
7 reasonably be used for residential because it
8 was too small which is an argument here for this
9 because it's about the same amount of FAR. It's
10 .19.

11 And that's about all we had in that
12 case. I think this case is stronger than that
13 because of the -- the location of it up against
14 this huge wall and the lack of access.

15 In the 2805 M case, you had a
16 separate door. You could go upstairs to the
17 second floor. So, the access wasn't even an
18 issue in that case and I think that makes this
19 case that much stronger than 2805 M.

20 And if I could read from the Palmer
21 decision. A use variance cannot be granted
22 unless a situation arises where reasonable use

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1 cannot be made of the property in a manner
2 consistent with the zoning regulations.

3 Usually, that applies to a whole
4 property because the use variance standard was
5 enacted, for instance, to address commercial
6 use in a residential zone. But, when we start
7 applying it to portions of FAR where -- in a
8 zone where commercial is permitted, it kind of
9 distorts the analysis a little bit. That's
10 why I think that the analysis in 2805 M and the
11 approval in 2805 M is constructive.

12 CHAIRPERSON JORDAN: All right.
13 And so, did you -- I understand all that.

14 MR. SULLIVAN: Yes. Thanks.

15 CHAIRPERSON JORDAN: What we're
16 required to do is take in the evidence and do
17 the evaluation. Making summaries about it is
18 not evidence. That's just a summary. It's
19 either argument -- or unless we have an expert
20 that's presenting to us based upon their
21 evaluation of the factual situation and then
22 report back to the Board and we have granted

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1 them expert status to make a conclusion. That
2 hasn't been presented here.

3 Additionally, I see a reference to
4 the OP report, but the OP report has not been
5 filed in this case as basis of evidence and I
6 could be wrong. I didn't --I don't know if it's
7 -- has it been filed in this case? Right. No.

8 So, I mean the OP report from the
9 previous --

10 MR. SULLIVAN: But, this is a
11 modification of that case. This is the same
12 case.

13 CHAIRPERSON JORDAN: Well, then we
14 also have some issues about relying on our former
15 testimony and decision under -- isn't that under
16 3129? Am I correct or incorrect? Without --
17 I mean to me the rule is either one way or the
18 other. You can't have it both ways in regards
19 to relying on the previous testimony.

20 Give me one second. I want to
21 confer with counsel.

22 MR. SULLIVAN: Sure.

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1 CHAIRPERSON JORDAN: Okay. This
2 matter is not a minor modification request.
3 It's being made as a modification request which
4 required it to go through the 3129.7 and .8
5 requirements.

6 What happened in the first case, the
7 original granting of relief, is not before us
8 in this modification.

9 MR. SULLIVAN: well, if that's the
10 case then, 3129.8 states that the scope of a
11 hearing shall be limited to the impact of the
12 modification. So, we shouldn't even be talking
13 about the --

14 CHAIRPERSON JORDAN: Continue
15 reading. Continue reading it. Continue
16 reading it.

17 MR. SULLIVAN: On the subject of the
18 original application. So, it shall be limited
19 to impact of the modification on the subject
20 of the original application and shall not permit
21 the Board to revisit its original decision.
22 Meaning you can't take it back. They're saying

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1 you can address the modification and the impact
2 of that modification.

3 CHAIRPERSON JORDAN: That's your
4 interpretation of what it's saying.

5 MR. SULLIVAN: Well, we don't have
6 a whole lot to go on because it's a fairly new
7 reg. It's a couple of years old, but I would
8 say the plain language is that the hearing shall
9 be limited to the impact of the modification
10 and that's all we have to go on. What's the
11 impact of this modification?

12 Really, I mean it's -- there's --
13 there were -- there were a couple of cases
14 decided under this reg, but every one of them
15 was pulled back and refiled because they added
16 special exception relief to the request. There
17 were two other cases where they were going to
18 go through this process, but then they said well,
19 we also want special exception and it was
20 completely separate relief.

21 So, it's either limited to the --
22 for as -- let's break it out this way.

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1 CHAIRPERSON JORDAN: Yes.

2 MR. SULLIVAN: As it relates to the
3 additional rear yard request, this is either
4 -- I absolutely believe that that should be
5 limited to the impact of the modification and
6 I would assert and I think the record shows and
7 I think OP's report would support this also that
8 the impact is actually a positive impact. The
9 problem is the yard. The problem is the trash
10 that accumulates there, the vermin that
11 accumulates there and the weeds and the
12 practical difficulty that's being resolved, and
13 this is from OP's report as well, that's being
14 resolved is filling that yard with a structure.

15 So, filling more of that yard only serves to
16 better resolve that practical difficulty. Now,
17 that goes to the rear yard.

18 It's either impact or if you redo
19 the variance test for those three things, we
20 meet the variance test for the same reasons that
21 we did in the original application. The
22 modification doesn't change that. In fact, the

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1 modification improves on the situation and it
2 better addresses the practical difficulty.

3 Regarding the FAR and the use
4 variance part of that, again, I think the record
5 shows and there's evidence in the record that
6 there isn't a separate entrance and I can have
7 Mr. Ramedani testify about that. There's not
8 a separate entrance. There's no access and it's
9 not reasonable to put that -- to fill that space,
10 that extra one FAR, but especially just the .19
11 with a residential use in that location.

12 CHAIRPERSON JORDAN: Um-hum. Yes.

13 MEMBER MacMURRAY: Good afternoon.

14 I have just a couple of questions.

15 I don't have the benefit of the other OP report
16 before me. So, I only have the one that's dated
17 April 24th, 2012 and in the summary, the Office
18 of Planning has stated that while they're not
19 opposed, they're unable to make a determination
20 because they don't have enough information and
21 then moving forward to Section 3, the summary
22 of the project and application history, the last

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1 comment from OP is that the modification request
2 doesn't appear to include any change in the plans
3 for construction.

4 So, I would like a little clarity
5 on if you're not changing, how does that affect
6 the undue hardship? You know, to help further
7 us so we can make an understanding of what's
8 going on.

9 MR. SULLIVAN: Yes, that section
10 refers to Lot 24. So, there were two buildings
11 in this original application.

12 MEMBER MacMURRAY: Okay.

13 MR. SULLIVAN: And the relief
14 granted for the one building is not changing
15 at all.

16 So, he's referring just to the
17 construction on Lot 824. There's no change on
18 that.

19 Regarding Lot 843 is where the
20 change.

21 I have a diagram that I think amidst
22 all the plans I would like to submit if I could.

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1 It shows the difference between the original
2 and the modification.

3 MEMBER MacMURRAY: Thank you.

4 MR. SULLIVAN: Would it be helpful
5 to submit some testimony from Mr. Ramedani about
6 that?

7 CHAIRPERSON JORDAN: Let me just.
8 I can ask you questions or ask Mr. Ramedani
9 on this issue.

10 One, regarding the undue hardship
11 issue, you've had someone go out and take a look
12 at it and they've advised you that it's no way
13 we can get this done. There's no way for it
14 to be made -- the situation to be corrected.

15 MR. SULLIVAN: I think it's
16 obvious. I don't think I need to --

17 CHAIRPERSON JORDAN: I'm asking a
18 question. Just --

19 MR. SULLIVAN: Yes.

20 CHAIRPERSON JORDAN: -- please
21 answer either yes or no. I'm trying to help
22 you get what we need in the record.

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1 MR. SULLIVAN: Yes. Like in the
2 first case. Has represented that to the
3 Applicant. Yes.

4 CHAIRPERSON JORDAN: So, I guess
5 we'll accept that. Even procedurally, Ms.
6 Glazer, what we will be doing is taking that
7 as a motion to include the exhibits and the
8 testimony that was in the first case into this
9 case. I'll accept that.

10 MR. SULLIVAN: Thank you.

11 CHAIRPERSON JORDAN: Have there
12 been any particular type of cost estimates of
13 what it would do to rectify the situation?

14 MR. SULLIVAN: I'm not sure. Do
15 you want to answer that question? I'm not sure
16 we --

17 CHAIRPERSON JORDAN: Has it been --
18 it's cost prohibitive? Is that the
19 understanding?

20 MR. SULLIVAN: Yes.

21 CHAIRPERSON JORDAN: It would be
22 cost prohibitive to do it?

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1 MR. SULLIVAN: Yes, and, in fact,
2 the original -- what was originally approved
3 is cost prohibitive, too, because it's a limited
4 amount of space.

5 CHAIRPERSON JORDAN: Okay. Good.
6 I just needed that for the record.

7 Any other questions of the
8 Applicant?

9 Office of Planning please.

10 MR. COCHRAN: Thank you, Mr. Chair.

11 It sounds like a little bit of
12 revisiting of history might be helpful here.

13 What the Applicant is asking for
14 today is really -- is their original
15 application. Because OP realized that the
16 Board would be considering this as a use
17 variance, not an area variance, we worked with
18 the Applicant -- actually, the Applicant's then
19 architect and convinced them that it would be
20 very difficult for us to support a use variance.

21 So, they reduced the size of the addition on
22 the second level of the addition to a point where

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1 they would no longer have to ask for a use
2 variance.

3 Afterwards, they realized
4 apparently that it wouldn't be worth their while
5 to spend the money on what would, in effect,
6 be the below-grade structure and then have such
7 a small above-grade structure with access to
8 light and air. In other words, they wouldn't
9 have any adequate return on their investment.

10 This is what I am paraphrasing the Applicant's
11 discussions as.

12 I don't think that OP would have any
13 problem supporting this were it an area
14 variance. They clearly have an unusual
15 situation with the shape of the lot, the lack
16 of access and the deep pit that was created by
17 the garage that was constructed about 20 years
18 ago.

19 They have a practical difficulty
20 which I think we summarized in the first report,
21 but they haven't demonstrated a hardship yet.

22 Do we think it's possible for the Applicant

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1 to demonstrate the hardship? Yes.

2 That is why we'd said not that we
3 recommend against your approval of the case,
4 but that we cannot yet recommend because they
5 haven't shown. Okay. To rectify the problem
6 of filling in the pit with space that maybe could
7 be used for storage, but nothing else, it's going
8 to cost us this much. Well, we can't rectify
9 this problem unless we have some above-grade
10 space that we can use for a profit-making purpose
11 to justify making everything better this way.

12 Because the public would be better served if
13 there weren't the -- if there weren't the pit,
14 et cetera.

15 But, our frustration has been that
16 the Applicant hasn't provided this information.

17 If the Board sees fit to recommend
18 for this, obviously, OP would have no problem.

19 The only problem we have is with the possible
20 impact on the zoning regulations from having --
21 from approving something where the Applicant
22 hasn't provided the information that is

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1 necessary to and we think quite possible to
2 supply to justify the approval.

3 CHAIRPERSON JORDAN: Any questions
4 of the Office of Planning anyone?

5 I'll turn to the Applicant and ask
6 questions of OP. You may. Questions of OP.
7 Applicant please.

8 MR. SULLIVAN: No. No questions.

9 MR. COCHRAN: Could I clarify on
10 more thing?

11 CHAIRPERSON JORDAN: Yes. Um-hum.

12 MR. COCHRAN: The applicant has
13 been saying that it's a modification and
14 obviously, it is a modification to the rear yard.

15 But, that section of the regs, as I think you
16 were alluding to Mr. Chair, says that it should
17 be limited to the impact of the modification
18 on the subject of the original application and
19 the subject of the original application was the
20 rear yard. It wasn't a use variance.

21 CHAIRPERSON JORDAN: That's
22 another way of looking at it, too. Um-hum.

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1 Any questions of Office of Planning?

2 MR. COCHRAN: We would be happy to
3 work with the Applicant if they wanted to ask
4 for a delay or to submit additional information.

5 CHAIRPERSON JORDAN: I am going to
6 -- I am willing to entertain -- well, I'm going
7 to continue the hearing so that we can get
8 additional information and evidence in regards
9 to the issue of undue hardship so we have that
10 for the record and ask that you work with Office
11 of Planning so we have that in the record for
12 this particular application.

13 MR. SULLIVAN: Okay. If I could
14 explain. I think I understand the genesis of
15 our problem here.

16 If this was an area variance request
17 which originally, I still theoretically,
18 technically I believe that's what it should be,
19 then we need the practical difficulty standard.

20 Everybody agrees on that.

21 The space itself is permitted. We
22 can go to 2.5 FAR. As far as FAR goes, we can

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1 go to 2.5 FAR. The question is whether or not
2 we can use that space for commercial or
3 residential.

4 So, I think the Board needs to
5 consider -- assume that the space is built just
6 like at 2805 M Street where the space was built.

7 Now, the question was well, can you use this
8 space, this extra .17, .19 FAR for commercial
9 or residential? No, you can't reasonably do
10 it because of the size of the space in that case.

11 So, the only -- the difference
12 between 2805 M and this case is that nothing
13 is built here yet, but it's permitted to be built
14 and so, I think what the Office of Planning is
15 doing and we're getting -- where we're getting
16 confused, we're mixing the two arguments. The
17 use variance and the area variance.

18 They're asking us to prove to them
19 that we have to build that space for commercial
20 use. All we're saying is the space could be
21 built. We can build -- as far as FAR goes, we
22 can build that space. The question is can we

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1 use that .19 for residential or not and we're
2 saying we can't.

3 So, it comes into play because this
4 -- it's a weird situation. You know, where
5 you're trying to fit a use variance argument
6 into something where it doesn't quite fit. It
7 may be a hybrid. Maybe it's a whole other
8 category.

9 So, it makes -- because I think the
10 use variance -- in this case, the use variance
11 argument's easier I think. There's no way we
12 can use that .1 and the area variance, you know,
13 it's a little more difficult. Why do you need
14 to fill the space, but that's been argued. So,
15 it's --

16 CHAIRPERSON JORDAN: Okay. I
17 appreciate that and we'll continue this over
18 until -- Cliff, what -- Mr. Secretary, when do
19 we have a possible date?

20 MR. MOY: Mr. Chairman, if it's the
21 Board's wish to make a decision on the papers,
22 then the next date for the Board to make that

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1 --

2 CHAIRPERSON JORDAN: No, we need to
3 put this for a hearing.

4 MR. MOY: Oh, for a public hearing.

5 CHAIRPERSON JORDAN: For
6 testimony.

7 MR. MOY: Okay. Just a second.
8 Well, we can do as early as next Tuesday which
9 would be May 8th. If not, then I would suggest
10 May 22nd.

11 CHAIRPERSON JORDAN: Yes.

12 MR. MOY: Either one in the
13 afternoon.

14 CHAIRPERSON JORDAN: Yes, I don't
15 want to hold the Applicant up any further. But,
16 do you think you could get us the information?

17 As you understand what we believe we -- what
18 we want to see by May 8th or do you need more
19 time?

20 MR. SULLIVAN: May 8th is fine.
21 I'd like to hear a little clearer I guess
22 statement of what information. You're asking

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1 for evidence on the undue hardship. Is that
2 correct?

3 CHAIRPERSON JORDAN: Absolutely.
4 We want to find -- we want to see why it's an
5 undue hardship. That you tried to look at it
6 many different ways. We try to draw it this
7 way. We tried to do it another way. The cost
8 is prohibitive for us to do it. That kind of
9 -- Mr. Schlater, you --

10 ZC VICE CHAIRMAN SCHLATER: Yes, I
11 think something from the architect might be
12 helpful.

13 CHAIRPERSON JORDAN: Something
14 from the architect and with some cost into it
15 or something. Yes.

16 Planning, what else would you want
17 to see in it?

18 MR. COCHRAN: I think you'll be
19 posting the testimony tomorrow. I think I
20 summarized what we were hoping the Applicant
21 would be able to provide.

22 Something that demonstrates that

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1 they can't eliminate the blight, the exceptional
2 condition without getting that revenue
3 generating space above. Where there is access
4 to light and air.

5 We already agree that you couldn't
6 possibly use it for residential space. They
7 just -- I mean we've been through this with the
8 Applicant. There's only one of those four
9 buildings that they own where they even have
10 the possibility of a secondary stair to go up
11 to a residential use on the top floor. The rest
12 of them are narrow.

13 So, we've been through this. It's
14 just a case of getting the material from them.

15 CHAIRPERSON JORDAN: And let me
16 suggest that Office of Planning and the
17 Applicant have a conversation.

18 We're going to move this to May 8th.
19 May 8th.

20 MR. SULLIVAN: If I could briefly
21 respond to that.

22 CHAIRPERSON JORDAN: No. Please.

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1 MR. SULLIVAN: Please.

2 CHAIRPERSON JORDAN: No. No. No.

3 That's not necessary because it's not going
4 to change where we are. It's being continued
5 until May 8th.

6 You can have the conversation
7 subsequently if you would please.

8 MR. MOY: Mr. Chairman, for May 8th,
9 perhaps for the Board's convenience and
10 especially Mr. Schlater, I'd suggest either the
11 first case in the morning or first case in the
12 afternoon.

13 CHAIRPERSON JORDAN: Okay.
14 Either. Okay. All right. Thank you.

15 Then very good. All right. So,
16 we've moved this to May 8th.

17 MR. MOY: So, that would be May 8th
18 first in the morning, sir.

19 CHAIRPERSON JORDAN: That's fine.

20 MR. MOY: Perfect.

21 CHAIRPERSON JORDAN: Okay. Thank
22 you. We'll continue this hearing on this matter

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1 until May 8th on the 9:30 docket. Good.

2 Mr. Secretary, is there any other
3 business?

4 MR. SULLIVAN: Thank you.

5 MR. MOY: Just if there are any
6 materials that are going to be submitted, would
7 the Board desire to have those materials by close
8 of business on Friday? Then I can get that to
9 the Board.

10 CHAIRPERSON JORDAN: Yes, that will
11 be good if we could. Yes.

12 MR. MOY: Okay. All right.

13 CHAIRPERSON JORDAN: Is that good
14 for the Applicant?

15 MR. SULLIVAN: Yes.

16 CHAIRPERSON JORDAN: Good. All
17 right. Mr. Secretary, any other business
18 coming before the Board at this time?

19 MR. MOY: Not from the staff, sir.

20 No.

21 CHAIRPERSON JORDAN: Does any Board
22 Member have anything else we need? Then we'll

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1 stand adjourned.

2 (Whereupon, at 1:53 p.m., the
3 hearing was adjourned.)

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