

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

JUNE 19, 2012

+ + + + +

The Regular Public Hearing convened in 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
NICOLE SORG, Vice Chairperson
JEFFREY HINKLE, Board Member (NCPC)
RASHIDA MacMURRAY, Board Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, FAIA, ZC
Commissioner (OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

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JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
PAUL GOLDSTEIN
ARTHUR JACKSON
KAREN THOMAS

The transcript constitutes the minutes from the Public Hearing held on June 19, 2012.

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

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

2 9:38 a.m.

3 CHAIRPERSON JORDAN: Good morning.

4 Would the hearing please come to order?

5 We're located at the Jerrily R.
6 Kress Memorial Hearing Room at 441 4th Street,
7 N.W.

8 Today's date is June 19th. And the
9 time now is 9:37. And we're here for the Public
10 Hearing of the Board of Zoning Adjustment of
11 the District of Columbia.

12 My name is Lloyd Jordan,
13 Chairperson. To my left is Vice Chair Person
14 Nicole Sorg. To her left is Michael Turnbull
15 representing the Zoning Commission. To my
16 right is Rashida MacMurray, Board Member. To
17 her right, Jeffrey Hinkle, Board Member.

18 Please be advised that this
19 proceeding is being recorded by a court reporter

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1 and is also being webcast live. Accordingly,
2 we must ask that you refrain from any disruptive
3 noises or actions in the hearing room.

4 The Board's hearing procedures and
5 the process are located in documents on the table
6 by the door.

7 So let's begin today's hearing
8 agenda.

9 All individuals wishing to testify
10 today, please raise to take the oath. If you're
11 going to testify, please stand and take the oath.

12 (Witnesses sworn in.)

13 CHAIRPERSON JORDAN: Thank you.

14 Mr. Secretary?

15 MR. MOY: Yes. Good morning, Mr.
16 Chairman, Members of the Board.

17 The first of three cases from the
18 morning session is Application No. 18363. This
19 application of Karine Megerdoomian pursuant to
20 11 DCMR 3104.1 for a special exception for a
21 rear addition to a one-family, semi-detached

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1 dwelling under Section 223, not meeting the lot
2 occupancy under Section 403, court requirements
3 under Section 406 and nonconforming structure
4 requirements under Subsection 2001.3. And the
5 R-4 District at premises 1116 I Street, S.E.,
6 Property Square 995, Lot 801.

7 Mr. Chairman, there's a preliminary
8 matter on this application. And I'll leave that
9 for the Board.

10 Thank you, sir.

11 CHAIRPERSON JORDAN: Okay.

12 Would the parties for Case 18363
13 come to the witness table, please?

14 MR. LAWLOR: Does it make a
15 difference which one?

16 CHAIRPERSON JORDAN: No, it
17 doesn't.

18 The only important thing about that
19 table is that you turn the microphone on with
20 the little green light.

21 And let me make sure that if you're

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1 going to testify -- anyone who's going to testify
2 -- completes the white cards and give them to
3 the court reporter, please.

4 Would you state your name, please,
5 for the record?

6 MR. LAWLOR: My name is Steve Lawlor
7 with Lawlor Architects, and I'm here as the
8 architect for Karine Megerdoomian, the
9 homeowner at 1116 I Street.

10 MS. MEGERDOOMIAN: My name is
11 Karine Megerdoomian, homeowner at 1116 I Street,
12 S.E.

13 CHAIRPERSON JORDAN: Thank you.

14 Mr. Secretary, I think you listed
15 as a preliminary matter would be the -- is it
16 a question of the authorization?

17 MR. MOY: Yes, sir.

18 MR. LAWLOR: I have that with me.

19 CHAIRPERSON JORDAN: Okay. If
20 you'd give that to the secretary, please.

21 Very good. So then let's proceed.

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1 Yes, give it back so we enter into the record
2 and establish whatever exhibit number that would
3 be.

4 MR. MOY: For the record, Mr.
5 Chairman, this letter of authorization will be
6 Exhibit 27.

7 (Whereupon, the document referred to as
8 Applicant's Exhibit 27 was
9 marked for identification.)

10 CHAIRPERSON JORDAN: Okay.

11 (Whereupon, the document previously referred
12 to as Applicant's Exhibit 27
13 for identification was
14 received in evidence.)

15 CHAIRPERSON JORDAN: All right.

16 This matter is before us for a special exception
17 to allow for a two-story rear addition to a
18 two-story, single-family detached dwelling.
19 And you're seeking relief from Section 403, Lot
20 Occupancy; 406, Court; and 2001 as an enlarged
21 nonconforming structure?

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1 MR. LAWLOR: That's correct.

2 CHAIRPERSON JORDAN: I think this
3 matter is pretty straightforward. However, I'm
4 going to ask the Board if there's anything that
5 they would like in addition for the questions
6 regarding this application, any issues that we
7 have pending.

8 Mr. Lawlor, let me ask. You can
9 make a presentation if you want. We believe
10 the record's pretty full. If there's something
11 else you want to tell us, you can. But we
12 believe the record's full.

13 MR. LAWLOR: No. I can stand on the
14 record. That's fine. Thank you.

15 CHAIRPERSON JORDAN: Okay. If
16 there's no questions of the Applicant, let's
17 turn to the Office of Planning and see if there's
18 anything that they would like to --

19 MR. COCHRAN: We also stand on the
20 record.

21 CHAIRPERSON JORDAN: Oh, that was

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1 just too easy.

2 And I believe we have an Office of
3 the Department of Transportation
4 recommendation, did we not? Yes, they had no
5 objection. And I don't think we had anything
6 else in the record from any other agency.

7 But let me go back a second. Mr.
8 Lawlor, anything you want to ask the Department
9 of Planning?

10 MR. LAWLOR: No. I've been in
11 touch with Mr. Cochran. And I fully understand
12 all the contents of his memorandum that he wrote
13 up of the report for this project. And I agree,
14 except there's one comment on Section 2, the
15 site and area description that the address is
16 incorrectly listed as 1161 I Street, where the
17 correct address is 1116 I Street.

18 CHAIRPERSON JORDAN: Okay. We'll
19 make that correction.

20 Do any of the Board Members have a
21 question for Planning?

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1 VICE CHAIRPERSON SORG: Just one
2 question actually for both Mr. Cochran and the
3 Applicant.

4 The OP report indicates that letters
5 were obtained from the adjacent neighbors. But
6 I don't believe that that at least has shown
7 up in my case file.

8 MR. LAWLOR: I have extra copies of
9 them here. And they were sent -- okay -- well,
10 they were sent in. And I know the report I think
11 references them. And I can give you a copy of
12 them right now if you'd like that.

13 VICE CHAIRPERSON SORG: Sure. I'm
14 sure you can give those to the Secretary. I
15 mean, obviously there's a good amount of support
16 already here. But if you've obtained them,
17 they're probably useful to submit.

18 Thank you.

19 CHAIRPERSON JORDAN: I guess they
20 didn't make a copy. Interesting.

21 Mr. Secretary, do you have any in

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1 your file?

2 MR. MOY: I'm checking now, sir.

3 CHAIRPERSON JORDAN: Okay.

4 Meanwhile, while he's checking, and
5 we thank you for providing those for us, is there
6 any representative for ANC 6B? Do we have a
7 letter and resolution from ANC 6B who voted nine
8 to nothing to support this application which
9 meets all the criteria for giving great weight
10 -- which we will do?

11 Are there others in the audience in
12 support of this application?

13 (No audible response.)

14 CHAIRPERSON JORDAN: We have a
15 letter from the Capitol Hill Restoration Society
16 recommending approval and standing in support
17 of this application. That's our Exhibit 22.

18 Are there any parties in opposition
19 -- any persons in opposition to this application
20 in the audience?

21 (No audible response.)

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1 CHAIRPERSON JORDAN: Seeing none,
2 then we'll move on from that point.

3 And we accept those letters of
4 support in the record unless anybody on the Board
5 has any issue with that.

6 MR. MOY: Thank you, sir. This
7 will be exhibit and these letters of support
8 will be Exhibit 28.

9 (Whereupon, the document referred to as
10 Applicant's Exhibit 28 was
11 marked for identification.)

12 MR. MOY: I can pass this down if
13 you care to read it.

14 CHAIRPERSON JORDAN: Okay. We're
15 good. Thanks.

16 (Whereupon, the document previously referred
17 to as Applicant's Exhibit 28
18 for identification was
19 received in evidence.)

20 CHAIRPERSON JORDAN: Mr. Lawlor, is
21 there anything you want to say to wrap up if

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1 necessary?

2 MR. LAWLOR: No. Other than the
3 fact that we have gone through the process of
4 involving the neighbors, both abutting and up
5 and down the block, the Capitol Hill Restoration
6 Society and Historic Preservation as well as
7 the ANCs in order to gain support. And I feel
8 that the design and the outreach that we have
9 exhibited has been represented in the unanimous
10 votes from the ANC and HPRB.

11 CHAIRPERSON JORDAN: Okay. Is
12 there any other item or issues that should come
13 before us before we close this hearing?

14 Yes?

15 MEMBER MacMURRAY: Mr. Chairman, I
16 just note in the Office of Planning's report
17 that the Historic Preservation Review Board
18 granted preliminary concept approval, and just
19 wanted to make sure that that was noted in the
20 record whether or not the Applicant had to do
21 something subsequent to this.

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1 CHAIRPERSON JORDAN: So, yes. And
2 the question is is there something that has to
3 be --

4 MEMBER MacMURRAY: Yes.

5 MR. LAWLOR: Yes. When we submit
6 for concept approval, that is a required step.
7 You do not have to get concept approval at the
8 beginning, but usually when you have concept
9 approval, then you can go ahead and get final
10 approval assuming that nothing changes in the
11 design. So normally, we get concept approval
12 wrapping on for final approval at the very
13 beginning. So we just kind of make sure that
14 all of our ducks are in a row before we go for
15 final. So we have to go back to Historic
16 Preservation. But that's just a staff sign-off
17 when we go for application for permit.

18 MEMBER MacMURRAY: Thank you.

19 CHAIRPERSON JORDAN: Okay. So
20 let's now close the hearing and the record for
21 this matter.

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1 Is the Board ready to move to
2 deliberation?

3 And we're going to open the floor
4 up for deliberation. Does anyone have anything
5 they want to say about this application?

6 VICE CHAIRPERSON SORG: Sure.
7 Thank you, Mr. Chairman.

8 I think that we've heard a couple
9 of additional notes today. But that the
10 advertised relief that's requested in this
11 application 223 relief is actually fairly
12 minimal. Their requests have been supported
13 by OP and ANC that the Capitol Hill Restoration
14 Society and all the neighbors on the block, I
15 believe. And I can very easily be in support
16 of the application.

17 CHAIRPERSON JORDAN: Okay. Anyone
18 else?

19 (No audible response.)

20 CHAIRPERSON JORDAN: Good. Okay.
21 Is there any motion that anyone

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1 wants to make?

2 VICE CHAIRPERSON SORG: Mr.
3 Chairman, I'll make a motion to approve
4 Application No. --

5 CHAIRPERSON JORDAN: 18363.

6 VICE CHAIRPERSON SORG: -- 18363
7 under the relief requested.

8 CHAIRPERSON JORDAN: Second,
9 anyone?

10 MEMBER MacMURRAY: Second.

11 COMMISSIONER TURNBULL: Second.

12 CHAIRPERSON JORDAN: And again, in
13 harmony we have a second with Mr. Turnbull and
14 Ms. MacMurray.

15 The motion made and seconded to
16 approve the application for the relief as
17 requested.

18 Any further discussion?

19 (No audible response.)

20 CHAIRPERSON JORDAN: Seeing none,
21 all those in favor signify by saying aye.

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1 (A CHORUS OF AYES.)

2 CHAIRPERSON JORDAN: Those opposed
3 a nay?

4 (No audible response.)

5 CHAIRPERSON JORDAN: The motion
6 carries.

7 Mr. Secretary?

8 MR. MOY: Yes, sir. Staff would
9 record the vote as five to zero to zero. The
10 Zoning motion of Vice Chairperson Sorg to
11 approve the application for special exception
12 relief under Section 223, not meeting lot
13 occupancy; Section 403; court, Section 406;
14 nonconforming structure provisions under
15 Section 2001.3 as shown on plans under Exhibit
16 No. 8. Second is the person closest to me --
17 Mr. Turnbull. Also in support of the motion,
18 Chairperson Jordan, Ms. MacMurray and Mr.
19 Hinkle.

20 Again, the motion carries five to
21 zero to zero.

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1 CHAIRPERSON JORDAN: Thank you.
2 And since this decision was made in favor of
3 the Applicant and there's no one in opposition,
4 I believe this is ripe for a summary order.

5 MR. MOY: Thank you, sir.

6 MR. LAWLOR: Thank you

7 CHAIRPERSON JORDAN: Thank you.

8 MS. MEGERDOOMIAN: Thanks.

9 CHAIRPERSON JORDAN: Sorry to make
10 it so tough on you.

11 MR. MOY: The next application is
12 Application No. 18360. This is the application
13 of Huckleberry Cheesecake Child Development
14 Center, pursuant to 11 DCMR 3103.2. This is
15 for a variance from the offstreet parking
16 requirements under Subsection 2101.1 for a child
17 development center in the DC/C-3-C District at
18 premises 1207 19th Street, N.W., properly
19 located in Square 138, Lot 803.

20 Again, with this application, Mr.
21 Chairman, there's a preliminary matter

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1 regarding the letter of authorization.

2 CHAIRPERSON JORDAN: Yes. Will
3 the parties for this case come to the witness
4 table, please?

5 Good morning.

6 MS. McCARTHY: Good morning.

7 CHAIRPERSON JORDAN: Can you
8 introduce yourself for us?

9 MS. McCARTHY: I'm Colleen
10 McCarthy, the owner of Huckleberry Cheesecake.

11 CHAIRPERSON JORDAN: I believe we
12 have a preliminary matter here where a question
13 has been raised in regards to authorization from
14 the owner in this matter for you to go forward
15 with this. And we have nothing in our file that
16 indicates that the owner granted authority to
17 you to process the application. And that is
18 a requirement under the law.

19 MS. McCARTHY: The owner of the
20 building?

21 CHAIRPERSON JORDAN: Yes.

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1 MS. McCARTHY: They did send -- yes.
2 Maybe it didn't make it there. But I do have
3 a copy of the letter that Boston Properties,
4 our landlord.

5 CHAIRPERSON JORDAN: Okay. If you
6 would give that to Mr. Moy.

7 (Whereupon, the document referred to as
8 Applicant's Exhibit 9 was
9 marked for identification.)

10 CHAIRPERSON JORDAN: What we
11 have in the file -- we've already had -- which
12 would be Exhibit 9 -- the letter from Boston
13 Properties. It's not a typical authorization
14 letter. He has not granted you to act as his
15 agent or in his behalf in this application.

16 However, if I can ask the Board to
17 take a look at Exhibit 9, and it's been offered
18 to me that this could satisfy our requirement
19 if the Board was willing to accept this letter
20 as the authorization.

21 I'll give everybody a second just

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1 to take a look at it.

2 And what the letter says for the
3 record is, "This is to advise you that the
4 undersigned, the owner of the property
5 referenced above, does not object to the
6 application for variance special exception by
7 the user, Huckleberry Cheesecake, to exempt it
8 from the requirements to obtain two parking
9 spaces in the building's underground garage
10 during the term of its lease of the property."

11 ZC COMMISSIONER TURNBULL: Mr.
12 Chair, I would agree with you. I don't think
13 it's really a straightforward things that we're
14 used to seeing. But there's sort of an implied
15 consent I guess you would say here in this.
16 I'd be willing to allow her to go ahead.

17 CHAIRPERSON JORDAN: Okay. Anyone
18 else?

19 MEMBER MacMURRAY: Mr. Chairman, I
20 would also concur and note that the signature
21 from the owner appears to be duly authorized

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1 to give this type of consent. It's not just
2 a manager of the property. It's actually the
3 Senior Vice President of the entity which to
4 me is a little bit more compelling than maybe
5 an onsite property manager who may not have that
6 kind of authority.

7 CHAIRPERSON JORDAN: Well, then
8 let's look at a formal waiver of 3113.4 in light
9 of this letter. And so, I would move that if
10 someone wants to second it.

11 MEMBER MacMURRAY: I second.

12 CHAIRPERSON JORDAN: Motion made
13 and seconded that we waive the requirements of
14 3113.4 in light of the letter that we have from
15 Boston Properties.

16 Any unreadiness?

17 (No audible response.)

18 CHAIRPERSON JORDAN: All those in
19 favor signify by saying aye.

20 (A CHORUS OF AYES.)

21 CHAIRPERSON JORDAN: Those opposed

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1 nay.

2 (No audible response.)

3 CHAIRPERSON JORDAN: The motion
4 carries.

5 So we'll accept the letter as
6 authorization.

7 MS. MCCARTHY: Great. Thank you.

8 CHAIRPERSON JORDAN: For those of
9 you dialing in at home, it's important that the
10 authorization be clear and specific from the
11 property owner. And we've had some other
12 matters and even some other matters on this
13 docket where we have some questions about the
14 owner authorizing activity. And it's just
15 important that the law is followed. So I just
16 want to make sure that particularly for the BZA,
17 we have form number -- I think it's 120 -- is
18 the form we normally use for that. Although
19 on form 135, there is a provision that states
20 something to that effect that we might want to
21 take a look at tightening up a little bit. But

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1 that those documents are filed in regards to
2 the authorization.

3 All right. Seeing that we've moved
4 that preliminary matter away, we're ready to
5 deal with the substance of the application.

6 Does any Board Member have any
7 questions on this particular application? Or
8 do we need the presentation? How do you feel?

9 MEMBER HINKLE: I just have a
10 question for the Applicant.

11 CHAIRPERSON JORDAN: Excuse me a
12 second.

13 What we try to do sometimes, if we
14 think that the record is full but we may have
15 questions about the application, it relieves
16 you of having to put on a full presentation
17 unless you wish to do so yourself. And we can
18 go to the matter where we can just ask questions
19 of you and get to probably the heart of where
20 our issues are.

21 But again, I don't want to take away

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1 from you the opportunity if you just want to
2 say something or do a presentation or something.

3 MS. McCARTHY: No, thanks. The
4 question is --

5 CHAIRPERSON JORDAN: I'm sorry, Mr.
6 Hinkle. Go ahead.

7 MEMBER HINKLE: Thank you.

8 It's really a quick question.
9 You've been operating in this neighborhood for
10 a number of years. I was curious as to how many
11 years.

12 MS. McCARTHY: Twenty -- this is our
13 21st year.

14 MEMBER HINKLE: Oh, is that right?

15 MS. McCARTHY: And we were for 20
16 years at 2001 M Street. When our lease was up
17 last year, the landlord -- they're doing a major
18 renovation -- like a three-year renovation.
19 And it was not going to work for us to live
20 through it. So that's why we moved up to 19th
21 and N Street -- 1307 19th Street.

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1 MEMBER HINKLE: Okay. And there
2 was no parking provided in that --

3 MS. McCARTHY: No parking in our
4 first location.

5 MEMBER HINKLE: Great. Thank you.

6 ZC COMMISSIONER TURNBULL: So all
7 of your staff take Metro or --

8 MS. McCARTHY: They do. It's
9 great. We have a lot of people that walk, use
10 Capital Bike Share, the Circulator, the Metro.
11 And it's really been a long time that that's
12 been the case. So it's -- it's good for
13 everyone.

14 ZC COMMISSIONER TURNBULL: Okay.
15 Thank you.

16 CHAIRPERSON JORDAN: And so it's my
17 understanding that the Boston Properties has
18 not provided parking for your lease though?

19 MS. McCARTHY: Correct. It was not
20 even an option for us to get it from them when
21 we were negotiating the lease.

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1 CHAIRPERSON JORDAN: Yes. Some
2 law firm gobbled it all up or something.

3 And you have inquired in the area
4 regarding the costs of outside parking offsite?

5 MS. McCARTHY: Correct. There's a
6 number of garages in the area. The closest one
7 is directly across the street. And the fee for
8 one monthly space is \$532 or \$537. Sorry, I
9 don't recall which. But kind of high.

10 CHAIRPERSON JORDAN: Yes.

11 Any other questions of the
12 Applicant?

13 VICE CHAIRPERSON SORG: Mr.
14 Chairman, I just note that we would actually
15 be here for relief anyway even if the Applicant
16 had found reasonable parking offsite as the
17 provision requires the parking to be onsite.

18 So I just wanted to note and I
19 appreciate the information provided regarding
20 the cost with regard to the variant standard.

21 So thank you.

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1 CHAIRPERSON JORDAN: Absolutely.
2 That's very helpful for us.

3 Any other questions of the
4 Applicant, anyone?

5 (No audible response.)

6 CHAIRPERSON JORDAN: Okay. Before
7 we turn to Office of Planning, is there anything
8 else you wanted to say to us at this point?

9 MS. McCARTHY: No. Thank you.

10 CHAIRPERSON JORDAN: Let's turn now
11 to the Office of Planning.

12 MS. THOMAS: Good morning. Karen
13 Thomas with the Office of Planning.

14 The Office of Planning will stand
15 on its report, and I'd be happy to take any
16 questions. Thank you.

17 CHAIRPERSON JORDAN: All right.
18 Do we have a report from DOT? I don't believe
19 we do. Do we?

20 Let me go back a second. Do you have
21 any questions of the Office of Planning that

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1 you may want to ask?

2 MS. McCARTHY: No. I've spoken
3 with -- with them several times, and they've
4 answered our questions.

5 CHAIRPERSON JORDAN: Okay.

6 Anyone present from the ANC 2B?

7 (No audible response.)

8 CHAIRPERSON JORDAN: We do have a
9 letter in support which should be given great
10 weight to ANC 2B who voted eight to nothing to
11 support the application.

12 Are there others in the audience in
13 support of this application?

14 (No audible response.)

15 CHAIRPERSON JORDAN: We do have a
16 letter of support from Peter Johnston, or the
17 property owner -- a representative of Boston
18 Properties who's in support of the application.

19 And that's our Exhibit 9.

20 Is there anyone in the audience in
21 opposition to the application?

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1 (No audible response.)

2 CHAIRPERSON JORDAN: Then Ms.
3 McCarthy, if you want you can just do a final
4 wrap-up or just stand on what's already
5 participated. You can say anything you want
6 to say.

7 MS. McCARTHY: Well, hopefully all
8 the information that you need is already in front
9 of you. And we hope that you'll consider this
10 application because it's not cost effective for
11 us to purchase these spaces, nor would they --
12 particularly since they won't be used by our
13 staff.

14 CHAIRPERSON JORDAN: I do have one
15 other question.

16 The RC lease -- your RC license,
17 what's the status of that?

18 MS. McCARTHY: We've been granted
19 a provisional one until we get this worked out.

20 CHAIRPERSON JORDAN: Okay. Is
21 that the one that expired --

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1 MS. McCARTHY: July 31st.

2 CHAIRPERSON JORDAN: Okay. You've
3 got one to July 31st. Okay, good.

4 All right. Any other questions of
5 the Applicant, anyone?

6 (No audible response.)

7 CHAIRPERSON JORDAN: Good. Then
8 let's close this hearing. And I believe the
9 Board's probably ready for deliberation. Okay.

10 So let's open the floor up for
11 deliberation. Anyone?

12 ZC COMMISSIONER TURNBULL: Mr.
13 Chair, I'm quite in favor of granting this.
14 I think obviously even if she could get the
15 spaces, they wouldn't be using them anyways
16 which seems putting an unfair burden on them.

17 So I would be in favor of granting this.

18 CHAIRPERSON JORDAN: Anyone else?

19 VICE CHAIRPERSON SORG: Mr.
20 Chairman, I agree with Mr. Turnbull. I think
21 that this case very clearly meets the variant

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1 standard. And I would be in support of the
2 application.

3 CHAIRPERSON JORDAN: And I also
4 agree that it appears from everything in the
5 record and the letters of support, particularly
6 from OP and ANC, that great weight be given,
7 and that you've met the burden required for the
8 variance from the parking relief from two spaces
9 to no spaces and that you have shown us that
10 there is an exceptional situation and that would
11 present itself as a practical difficulty and
12 that there will be no substantial detriment to
13 the public good if we granted this.

14 So with that, I would move that we
15 grant the relief requested.

16 MEMBER MacMURRAY: Mr. Chairman,
17 I'll second the motion.

18 CHAIRPERSON JORDAN: Motion made
19 and seconded to grant the relief of Application
20 18360 as requested.

21 Any unreadiness?

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1 (No audible response.)

2 CHAIRPERSON JORDAN: Seeing none,
3 all those in favor signify by saying aye.

4 (A CHORUS OF AYES.)

5 CHAIRPERSON JORDAN: Those opposed
6 nay.

7 (No audible response.)

8 CHAIRPERSON JORDAN: The motion
9 carries.

10 Mr. Moy?

11 MR. MOY: Staff would record the
12 vote as five to zero to zero, this on the motion
13 of Chairman Jordan to approve the application
14 for variance relief from offstreet parking
15 spaces, the two required spaces under Subsection
16 2101.1. Also in support of the motion, Ms.
17 MacMurray as well as from Mr. Turnbull, Vice
18 Chairperson Sorg and Mr. Hinkle.

19 Again, the final vote is five to zero
20 to zero. The motion carries, Mr. Chairman.

21 CHAIRPERSON JORDAN: Thank you.

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1 And Mr. Moy, can we have a summary order on this?

2 MR. MOY: Yes, sir. Thank you.

3 CHAIRPERSON JORDAN: I noticed that
4 you were waiting for it and I almost forgot it.

5 You gave me that look.

6 Thank you very much.

7 MS. MCCARTHY: Thank you very much.

8 I appreciate it.

9 MR. MOY: The third and final
10 application for the morning session, Mr.
11 Chairman, is Application No. 18362. This is
12 the application of Chicken to Go, Incorporated,
13 pursuant to 11 DCMR 3104.1 for special exception
14 to operate a fast-food establishment under
15 Section 733 in the C-2-A District at premises
16 2427 Minnesota Avenue, S.E., property located
17 in Square 5578, Lot 74.

18 As with the previous two cases, Mr.
19 Chairman, this application also has a bit of
20 a preliminary matter regarding the
21 authorization that's on record.

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1 And that completes staff's
2 briefing, Mr. Chairman.

3 CHAIRPERSON JORDAN: Okay. Are
4 the persons or parties here for 18362?

5 Okay. Good morning.

6 MR. KIM: Good morning.

7 CHAIRPERSON JORDAN: Please
8 identify yourselves.

9 MS. JACKSON: My name is Sharon
10 Jackson. I'm an employee at Chicken to Go.

11 MR. KIM: Yes. My name is Heui Kim,
12 Chicken to Go Carryout owner.

13 CHAIRPERSON JORDAN: Could you give
14 us your name again?

15 MR. KIM: Yes. Heiu Kim.
16 H-E-U-I.

17 CHAIRPERSON JORDAN: Okay.

18 MR. KIM: Heiu Kim -- K-I-M.

19 CHAIRPERSON JORDAN: Okay. And
20 you're the owner of Chicken to Go?

21 MR. KIM: Yes.

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1 CHAIRPERSON JORDAN: Okay. We
2 have some issues going again with the
3 authorization from the owner. This matter is
4 a bit confusing, but we see nothing that provides
5 a letter from Todd Norris that gives you
6 authorization to represent him in this matter.

7 In fact, there is a letter in the file I believe
8 -- well, there was a communication with Mr.
9 Pettoir. Is that the right name? Are you
10 familiar with that person?

11 MS. JACKSON: We also have another
12 letter right here also from Mr. Todd W. Norris.

13 CHAIRPERSON JORDAN: Okay. If
14 you'll present that to Mr. Moy, please.

15 I'm just going to take a brief
16 two-minute recess and let counsel try to sort
17 through these documents.

18 (Whereupon, at 10:12 a.m., off the
19 record until 10:13 a.m.)

20 CHAIRPERSON JORDAN: Now I don't
21 know if you helped us or made us even more in

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1 wonder.

2 The letter from Mr. Norris says
3 that, "I authorize Jackie Chun and Chicken to
4 Go to act on my behalf at any Zoning District
5 of Columbia licensing or any other government
6 hearing that may affect the property."

7 And then we have an email from Todd
8 Norris that authorizes Julie Kim and Chicken
9 to Go to act on his behalf regarding zoning.
10 So maybe you can clear that up. Who's Jackie
11 Chun?

12 MS. JACKSON: She's one of the
13 partners. She's not right -- she's not here
14 today. Ms. Julie Kim is here today also. And
15 I'm an employee at Chicken to Go also. So --

16 CHAIRPERSON JORDAN: Okay. So
17 Julie Kim is here? Ms. Kim? Ms. Kim would you
18 come forward, please? We do have something that
19 authorizes you although it's not signed. It's
20 an email.

21 Let me ask you, Mr. Kim. Who makes

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1 up Chicken to Go? Who owns Chicken to Go?

2 MR. KIM: Yes, yes. I do.

3 CHAIRPERSON JORDAN: Okay. And
4 Ms. Kim, are you husband and wife, brother and
5 sister?

6 MS. KIM: I work with him.

7 CHAIRPERSON JORDAN: You work with
8 him.

9 You need to turn your mic on.

10 And let me do this before you
11 continue. Would you take the oath? Did you
12 take the oath when you were sitting in the back?

13 MS. JACKSON: She did.

14 CHAIRPERSON JORDAN: She did?
15 Okay. Thank you.

16 And we need you all to complete the
17 witness cards so we can give them to the court
18 reporter.

19 Okay. I think I have this thing
20 resolved.

21 The Chair will entertain a motion

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1 from the Board to waive the provisions of 3113.4
2 in light of these documents. And we do have
3 Julie Kim here, and I think we can accept that.

4 Is that good for anyone? Does someone just
5 want to make a motion?

6 Mr. Hinkle?

7 MEMBER HINKLE: I second. I
8 thought you were going to move.

9 CHAIRPERSON JORDAN: I said I would
10 just entertain. I'll make it a motion and
11 you'll just second it.

12 Mr. Hinkle just seconded the motion
13 to waive 3113.4 and accept this kind of in lieu
14 thereof because we do have Ms. Kim at the table
15 and we do have Chicken to Go at the table.

16 So motion made and seconded that we

17 --

18 ZC COMMISSIONER TURNBULL: How many
19 owners are there?

20 MS. KIM: One owner. He's owner.

21 ZC COMMISSIONER TURNBULL: But

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1 you're an owner too?

2 MS. KIM: I'm wife. His wife.

3 ZC COMMISSIONER TURNBULL: Okay.

4 CHAIRPERSON JORDAN: Yes. So
5 there was a motion made and seconded that we
6 waive 3113.4 in light of the letter and that
7 we do have Ms. Kim here and we have Mr. Kim and
8 Sharon Jackson doing the presentation.

9 All those in favor signify by saying
10 aye.

11 (A CHORUS OF AYES.)

12 CHAIRPERSON JORDAN: Those opposed
13 nay.

14 (No audible response.)

15 CHAIRPERSON JORDAN: Okay. Thank
16 you.

17 All right. Just a few little things
18 that we have to do here this morning.

19 Now this is a request for waiver of Section
20 733.2 and 733.3. I'm going to turn to the Office
21 of Property to kind of define the relief that's

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1 requested because I understand there was some
2 issue about what relief actually needed to
3 happen here.

4 MR. GOLDSTEIN: Absolutely.

5 Good morning, Mr. Chair and Members
6 of the Board. My name is Paul Goldstein with
7 the Office of Planning.

8 Yes. We reviewed the application
9 closely and had a number of discussions with
10 the Applicant about the proper relief that was
11 needed.

12 We felt that they did satisfy the
13 special exception criteria. The one area that
14 we felt needed a modification was 733.4. So
15 we felt that -- just to go through the ones that
16 the Chair mentioned -- 733.2 although identified
17 in the original application as needing to be
18 modified, we felt just didn't really apply.
19 733.3 as well, we felt didn't apply to this
20 circumstance. So it's really 733.4 which is
21 the enclosure around the trash that was the one

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1 that needed special attention.

2 And the Office of Planning Analysis
3 is there. We did not feel that it needed to
4 have a specific enclosure although if the Board
5 feels differently, that can certainly be a
6 discussion.

7 During our site visit -- I put some
8 pictures in that you can see in the OP report
9 -- looked like it was well maintained. There
10 were I think three trash cans along the side
11 of the fast-food establishment. That is public
12 space. So to have a fixed enclosure, it's my
13 understanding they'd need to go through the
14 Public Space Committee to get that.

15 Whether some temporary screening
16 could be put up there without specific Public
17 Space Committee review, that might be a
18 possibility. But given how clean the space
19 looked, the thought that maybe screening may
20 not look as good as it does currently. We didn't
21 feel it was necessary to push for.

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1 So that's the OP analysis. Looking
2 through the rest, 733.5 doesn't apply. 733.6,
3 I'm not sure it's worth going through each one.

4 So we addressed each --

5 CHAIRPERSON JORDAN: And I'm
6 looking at the reference letter -- the letter
7 from the Zoning Administrator. And he just says
8 in general, 733, without any specific
9 subsections. So

10 MR. GOLDSTEIN: It took a little
11 teasing out. So 733, it's all the special
12 exception criteria. So you had to go through
13 it. And under the special exception, I believe
14 the final provision allows you to modify 733.12
15 -- allows you to modify within a certain number
16 of provisions.

17 CHAIRPERSON JORDAN: Ms. Sorg?

18 VICE CHAIRPERSON SORG: Thank you,
19 Mr. Chairman.

20 I think in reading the application
21 and sort of trying to tease out the merit here,

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1 it seemed like -- especially reading the
2 Applicant's initial statements -- that there
3 may have been prior to their speaking to Mr.
4 Goldstein a little bit of misunderstanding with
5 regard to how to address some of the section.

6 But I think that actually you do a great job
7 in the Office of Planning report teasing out
8 what is the existing conditions.

9 I do have a question for you about
10 733.4.

11 CHAIRPERSON JORDAN: Let me --
12 Office of Planning?

13 VICE CHAIRPERSON SORG: Office of
14 Planning.

15 CHAIRPERSON JORDAN: Okay. Yes,
16 please.

17 VICE CHAIRPERSON SORG: The
18 regulation says, "Any refuse dumpster shall be
19 housed in a" blah, blah, blah, blah. Tell me
20 your interpretation of the regulation. Because
21 I don't read it as requiring a housing for

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1 refuse, only that there is a requirement that
2 must be followed should one be provided. And
3 so I'm not certain whether we need to give an
4 exception to that portion of 733 in this case.

5 MR. GOLDSTEIN: I think that is a
6 reasonable interpretation too. I did not know
7 whether refuse dumpster versus refuse cans could
8 be separated out. So I kind of treated it as
9 a modification.

10 If the Board thinks this doesn't
11 apply because it's not an actual dumpster, if
12 that's what Commissioner Sorg is getting at,
13 certainly it's the Board's prerogative.

14 I wasn't sure if that was too fine
15 a distinction or if they're both serving sort
16 of the same function. But if the Board finds
17 those are distinguishable, that could be an
18 interpretation.

19 VICE CHAIRPERSON SORG: And you
20 correct me if I'm wrong. I mean, perhaps it
21 is a fine point. But you correct me if I'm

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1 wrong. I think that in the regulations for
2 eating establishments in other zones, the
3 distinction is made in the regulations in the
4 language referring to trash in general. So I
5 just want to understand what we think is really
6 the absolute -- the technically correct reading.

7 So I'd appreciate it.

8 MR. GOLDSTEIN: That's a reasonable
9 interpretation. I understand.

10 ZC COMMISSIONER TURNBULL: Mr.
11 Goldstein, you mentioned on page five of your
12 report possible recommendations. It was under
13 the previous C of O. And it didn't look like
14 you were tied to those.

15 MR. GOLDSTEIN: I didn't see any
16 reason to impose these conditions of the
17 previous order. But I did want to flag to the
18 Board that the previous fast-food establishment
19 did have these conditions imposed on its
20 approval just in case the Commission felt for
21 some reason there was a reason to maintain them.

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1 ZC COMMISSIONER TURNBULL: Do you
2 know if they followed up?

3 MR. GOLDSTEIN: That's another good
4 question. And I don't know the answer to that.

5 ZC COMMISSIONER TURNBULL: Yes.
6 Because otherwise, you have to find a place to
7 put the dumpsters if you're only allowing them
8 for two hours during trash pick-up days.

9 MR. GOLDSTEIN: That one seemed
10 more difficult to comply with.

11 ZC COMMISSIONER TURNBULL: Right,
12 right.

13 CHAIRPERSON JORDAN: And
14 otherwise, where you're placing it anyway in
15 the interim.

16 ZC COMMISSIONER TURNBULL: Yes.

17 CHAIRPERSON JORDAN: Okay. So
18 let's just step through the requirements for
19 the special exception. However, let's turn
20 back now to the Applicant.

21 Which one of you are going to talk?

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1 MS. JACKSON: I believe I'll be
2 doing most of the talking.

3 CHAIRPERSON JORDAN: Okay. I
4 don't know if you have a presentation for us.
5 You can do a presentation and just tell us what
6 you're doing and why you need it. Or you can
7 just let us ask you questions where we think
8 is necessary. And that might help us step
9 through this process unless you feel one way
10 or another.

11 MS. JACKSON: Your suggestion is
12 great.

13 CHAIRPERSON JORDAN: Okay.

14 Are there questions for the
15 Applicant regarding this application?

16 (No audible response.)

17 CHAIRPERSON JORDAN: I do have a
18 question.

19 Did Chicken to Go request a meeting
20 with the ANC and discuss this with the ANC?

21 MS. JACKSON: We did make a call to

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1 the ANC. At the time that we called, we got
2 an answering machine. I personally left a
3 message on their machine. I'm -- and did they
4 call back?

5 MS. KIM: We tried online to make
6 the letter. But we can't.

7 CHAIRPERSON JORDAN: You sent the
8 letter?

9 MS. JACKSON: We did it on the
10 Internet. We tried to send them -- compose an
11 email to them and send it to them. But it
12 wouldn't let us go through. So we called. I
13 called and left a message. And no one actually
14 called me back or called the store back and --
15 to set up a meeting or anything. So I'm not
16 sure what went on with that.

17 CHAIRPERSON JORDAN: What was the
18 substance of your message that you left?

19 MS. JACKSON: We were advised that
20 we should have a meeting with them just to make
21 sure that they had no objections to our

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1 application and to make sure that everything
2 that we wanted was also the same that they wanted
3 and they didn't -- there was no problem with
4 what we were asking for as far as the business
5 goes. So we did that. But no one contacted
6 us. That's who actually had the meeting and
7 set it up and actually see face to face.

8 CHAIRPERSON JORDAN: Okay. And
9 what are the businesses to your left and to your
10 right? What are they:

11 MS. JACKSON: Also there's Mario's
12 Pizza right there right next door to us. Then
13 there's us. And then on Pennsylvania Avenue,
14 we have -- what is it called -- Capital Carryout.
15 And then up the street from where we are, we
16 also have a new store called Michaelangelo's
17 Pizza.

18 CHAIRPERSON JORDAN: Okay. And
19 did you have occasion to talk to them about this
20 application?

21 MS. JACKSON: I don't believe we've

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1 actually talked to them about our application.

2 CHAIRPERSON JORDAN: Okay. Any
3 other questions, anyone?

4 ZC COMMISSIONER TURNBULL: You have
5 a temporary C of O now?

6 MS. JACKSON: Yes.

7 ZC COMMISSIONER TURNBULL: And when
8 does that expire?

9 MS. KIM: August 31, 2012.

10 ZC COMMISSIONER TURNBULL: Okay.

11 CHAIRPERSON JORDAN: And you did
12 post in front of the store -- I see the picture
13 -- notice that you had this application pending
14 -- the public notice?

15 MS. JACKSON: Yes.

16 CHAIRPERSON JORDAN: Okay. Anyone
17 else?

18 (No audible response.)

19 CHAIRPERSON JORDAN: Okay. Let's
20 now turn to the Office of Planning. And is there
21 anything in addition that you need that you want

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1 to give us?

2 MR. GOLDSTEIN: I can add that I did
3 speak to an ANC Commissioner about the case.
4 And I've communicated that with the Applicant.

5 There were two things expressed to
6 me during that conversation. The first was
7 about the kitchen door along Minnesota Avenue
8 being left open. I think there was a concern
9 about the safety of the business. And I believe
10 that that's been resolved by the Applicant.

11 And then to a lesser extent just
12 concern there was a cleanliness with the trash
13 area. I don't think that they had any existing
14 problems with it. It was just the concern that
15 it remains clean in the future.

16 CHAIRPERSON JORDAN: Okay.

17 MR. GOLDSTEIN: So those have been
18 communicated as well.

19 Otherwise, the Office of Planning
20 is supportive of the application. And I'm happy
21 to provide any more information that the Board

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1 may have.

2 And with that, I'll be open to any
3 questions.

4 CHAIRPERSON JORDAN: Thank you.

5 Does the Board have any questions
6 of the Office of Planning?

7 (No audible response.)

8 CHAIRPERSON JORDAN: Does the
9 Applicant have any questions of the Office of
10 Planning?

11 (No audible response.)

12 CHAIRPERSON JORDAN: The
13 Department of Transportation is not here I don't
14 believe. However, they sent a letter of no
15 objection or being in support of the
16 application.

17 We do not have a letter from the ANC
18 in this matter.

19 Is there anyone in the audience in
20 support of the application?

21 (No audible response.)

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1 CHAIRPERSON JORDAN: Is there
2 anyone in opposition?

3 (No audible response.)

4 CHAIRPERSON JORDAN: Is there
5 anything that the Applicant wants to talk to
6 the Board or tell the Board that you think will
7 be necessary for us to deliberate?

8 MS. JACKSON: Well, just as far as
9 the trash goes and the side door, the side door,
10 from the time we found out that it was a problem
11 with it's staying open, we have -- we locked
12 it. The only time it does open is when there
13 are deliveries coming in or something needs to
14 go out. And also, the trash, we have one
15 employee that comes in every night and cleans
16 that, makes sure it's clean outside all around
17 our store. The trash dumpsters, he also cleans
18 besides the trash dumpsters as well. So I'm
19 more than sure that we'll be able to keep that
20 very clean and very sanitary and it will not
21 be a nuisance to the area at all.

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1 CHAIRPERSON JORDAN: Okay. Yes,
2 Mr. Turnbull?

3 ZC COMMISSIONER TURNBULL: How many
4 times is trash picked up?

5 MS. JACKSON: Twice a week.

6 ZC COMMISSIONER TURNBULL: Twice a
7 week.

8 MS. JACKSON: Yes.

9 ZC COMMISSIONER TURNBULL: Okay.

10 CHAIRPERSON JORDAN: With that, if
11 there's not anything else we need to ask the
12 Applicant or add to this record, then we'll close
13 the hearing and move to deliberation. Is the
14 Board ready for deliberation? Then let's do
15 that. Okay.

16 So we're open for deliberation.
17 Any Board Member have anything they want to say
18 about the application?

19 (No audible response.)

20 CHAIRPERSON JORDAN: I'll just add
21 for the record that I believe the record is

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1 sufficient. I wish we had something from the
2 ANC. However, we've had reports from the Office
3 of Planning, and their report in support of this
4 certainly gives great weight and the fact that
5 I keep hearing over and over again that the
6 area's generally clean and generally well
7 maintained. It's an area of kind of fast foods
8 and other restaurants. So there wouldn't be
9 any effect upon any of the neighbors. And I
10 could be in support of this application.

11 Anyone else?

12 MEMBER MacMURRAY: Yes. Mr.
13 Chairman, I would agree with your assessment
14 and also from the testimony that we had from
15 the Applicant, Applicant's employee, regarding
16 already concerns or attention to some of the
17 concerns that were raised from the Office of
18 Planning and have begun to incorporate it. And
19 then also the fact that temporary CO expires
20 in August of this year.

21 CHAIRPERSON JORDAN: Anyone else?

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1 ZC COMMISSIONER TURNBULL: Mr.
2 Chair, I would concur. I'm in agreement with
3 the both of you.

4 I would just want to be sure that
5 it's on the record that as Mr. Goldstein's
6 comments from the ANC are noted and that the
7 Applicant has agreed to address both of those
8 and to keep the area clean.

9 CHAIRPERSON JORDAN: With that, I
10 would move -- well, let me take a step back.

11 I believe that the Applicant has
12 satisfied the requirements for special
13 exception under 733 for this fast-food
14 establishment. And so, I would move that we
15 grant the relief requested.

16 VICE CHAIRPERSON SORG: Second.

17 CHAIRPERSON JORDAN: Motion made
18 and seconded that we grant the relief for the
19 special exception for the fast-food
20 establishment.

21 Any unreadiness?

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1 (No audible response.)

2 CHAIRPERSON JORDAN: Seeing none,
3 all those in favor signify by saying aye.

4 (A CHORUS OF AYES.)

5 CHAIRPERSON JORDAN: Those opposed
6 nay.

7 (No audible response.)

8 CHAIRPERSON JORDAN: The motion
9 carries.

10 Mr. Moy?

11 MR. MOY: Yes, sir. Staff would
12 record the vote as five to zero to zero to the
13 motion of Chairperson Jordan to approve the
14 special exception relief under Section 733.
15 In support of the motion the Vice Chair Sorg;
16 also in support of the motion, Mr. Turnbull,
17 Mr. Hinkle and Ms. MacMurray. Again, the vote
18 is five to zero to zero. The motion carries,
19 Mr. Chairman.

20 CHAIRPERSON JORDAN: Good.

21 And again, I believe this is ripe

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1 for a summary order since there's been no
2 opposition. It's been properly noticed, and
3 we've had no opposition. This decision is in
4 favor of the Applicant.

5 With that, we will conclude.

6 MR. MOY: Thank you, sir.

7 MS. JACKSON: Thank you.

8 CHAIRPERSON JORDAN: Is that all
9 our business for this morning?

10 MR. MOY: That's correct, sir.

11 CHAIRPERSON JORDAN: And this
12 afternoon, I believe we have one case. Is that
13 correct?

14 MR. MOY: Yes, sir. We have one
15 case in the afternoon. And the other
16 application -- since you brought it up -- the
17 other application which is Application No. 18333
18 of Grant Barker has been withdrawn.

19 CHAIRPERSON JORDAN: That's
20 withdrawn.

21 Should we deal with the request for

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1 postponement for 18364 now, or should we just
2 wait until later?

3 MR. MOY: I would wait, sir. My
4 understanding is the Applicant will be appearing
5 at 1:00 o'clock.

6 CHAIRPERSON JORDAN: Okay. Very
7 good.

8 There's no other business for us
9 this morning. Then we stand in recess until
10 1:00 o'clock.

11 (Whereupon, at 10:34 a.m., off the
12 record until 1:08 p.m.)

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

1:08 p.m.

CHAIRPERSON JORDAN: All right.

Let's bring the hearing to order.

Good afternoon, ladies and gentlemen. We're located at the Jerrily R. Kress Memorial Hearing Room here at 441 4th Street, N.W.

Today's date is June 19, 2012. And

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1 the time now is 1:06 p.m.

2 My name is Lloyd Jordan,
3 Chairperson. And to my left is Nicole Sorg,
4 Vice Chairperson. To her left is Michael
5 Turnbull, a Member of the Zoning Commission.
6 To my right, Rashida MacMurray, Board Member,
7 and to her right, Jeffrey Hinkle, Board Member.

8 Please be advised that this hearing
9 is being recorded by a court reporter and also
10 being webcast live. Accordingly, we must ask
11 you to refrain from disruptive noises or actions
12 while we're in the hearing room.

13 The Board's hearing procedures and
14 how we will process applications can be found
15 on the table in the back of the room.

16 So let's begin today's agenda.

17 All those who are going to testify or
18 present testimony in any other cases today,
19 please stand and get sworn.

20 (Witnesses sworn in.)

21 CHAIRPERSON JORDAN: Okay.

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1 Mr. Secretary, do you want to handle
2 the case with the preliminary matter first?

3 MR. MOY: Yes, sir. I'd like to
4 announce first for the record that one of the
5 three cases scheduled for this afternoon is
6 Application No. 18333. This is the application
7 of Grant Barker. The Applicant has withdrawn
8 his application.

9 Secondly, Mr. Chairman, we do have
10 for the Board a preliminary matter regarding
11 a request for a postponement. And that goes
12 to Application No. 18364. This is the
13 application of Barracks Row.

14 CHAIRPERSON JORDAN: Let's call
15 that case if we could.

16 MR. MOY: That would be again
17 Application No. 18364, application of Barracks
18 Row Venture LLC, pursuant to 11 DCMR 313.2 for
19 a variance from the rear yard requirements under
20 Section 774 and a variance from the parking
21 requirements for historic buildings under

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1 Subsection 2120.3. This is to allow an addition
2 to an existing building for retail, office and
3 restaurant use in the CHC/C-2-A District at
4 premises 717 8th Street, S.E., property located
5 in Square 904, Lot 35.

6 CHAIRPERSON JORDAN: Okay. Thank
7 you.

8 Would you please identify yourself
9 for the record, please?

10 MR. TUMMONDS: Sure. Good
11 afternoon, Mr. Chairman, Members of the Board.

12 My name is Paul Tummonds with the
13 law firm of Goulston & Storrs. I have been
14 retained on behalf of Barracks Row Ventures LLC
15 in t his case.

16 As Mr. Moy noted, we are requesting
17 a postponement of this case as we continue to
18 further refine the modifications that we are
19 looking to make to this building. I will submit
20 for the record both the agent authorization
21 letter allowing myself to represent the

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1 Applicant as well as a letter from the
2 single-member District Commissioner, ANC 6B-03,
3 supporting this request for postponement.

4 CHAIRPERSON JORDAN: Is your
5 authorization already in the file?

6 And I understand that your reason
7 is that you're revising plans, is that correct?

8 MR. TUMMONDS: Yes. We're
9 revising the plans. The schedule currently is
10 that the Applicant will be making presentations
11 to the Capitol Hill Restoration Society and ANC
12 6B's executive committee and then the full ANC
13 in the next two weeks.

14 CHAIRPERSON JORDAN: Okay. Has
15 this been on our docket before that we've
16 postponed it before? No? Okay.

17 Any Board Member have any questions
18 about the request for postponement?

19 (No audible response.)

20 CHAIRPERSON JORDAN: Anybody have
21 any objection to it?

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1 (No audible response.)

2 CHAIRPERSON JORDAN: How soon will
3 you be ready?

4 MR. TUMMONDS: The Applicant has
5 had discussions with Mr. Moy, and I believe that
6 there is availability on July 24th. We'll be
7 ready for July 24th.

8 CHAIRPERSON JORDAN: Mr. Moy, is
9 that date a date that we're working with?

10 MR. MOY: Yes, it can be, Mr.
11 Chairman, for the desire of the Board. There's
12 room certainly in the afternoon for that.

13 CHAIRPERSON JORDAN: That's fine.
14 Let's set it down for -- Mr. Moy, what about
15 the morning of the 24th?

16 MR. MOY: The morning would be
17 perfect.

18 CHAIRPERSON JORDAN: I think the
19 morning is probably the place where it should
20 go. Yes. Let's do the morning of the 24th.

21 So by consensus, we agree to the

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1 postponement to the July 24th, 9:30.

2 MR. TUMMONDS: Wonderful. Thank
3 you very much.

4 ZC COMMISSIONER TURNBULL: Mr.
5 Chair, I will not be there. Mr. Hood will be
6 there for the Zoning Commission.

7 CHAIRPERSON JORDAN: Do you want us
8 to wait? We can change it for you.

9 ZC COMMISSIONER TURNBULL: It's
10 okay.

11 CHAIRPERSON JORDAN: We'll do it
12 for you.

13 ZC COMMISSIONER TURNBULL: Mr. Hood
14 is quite qualified to do this.

15 CHAIRPERSON JORDAN: Then let's
16 proceed to our next case, please. Thank you.

17 MR. MOY: That would be Application
18 No. 18368. This is the application of John B.
19 Ritch, pursuant to 11 DCMR 3103.2 for a variance
20 from the building height requirements under
21 Section 400, a variance from the lot occupancy

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1 requirements under Section 403, a variance from
2 the side yard requirements under Section 405,
3 and a variance from the nonconforming structure
4 provision that's under Subsection 2001.3. This
5 is for an addition to an existing one-family
6 dwelling in the R-1-B District at premises 1830
7 24th Street, N.W., property located in Square
8 2506, Lot 44.

9 CHAIRPERSON JORDAN: Thank you.

10 Let's proceed with this case.

11 Could you please identify
12 yourselves, please? And make sure the -- yes,
13 the green button's pushed, please.

14 MS. VERBEKE: Jennifer Verbeke of
15 Mangan Group Architects.

16 MR. MANGAN: John Mangan with
17 Mangan Group Architects.

18 CHAIRPERSON JORDAN: Thank you.

19 I believe we do have a preliminary
20 matter here, don't here? Is there an issue here
21 with authorizations? I think the 135 is signed

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1 though. That would be correct? Yes, I think
2 the 135 is signed. That's the other one. We
3 just have a 135 and not a 120. Okay. I think
4 we're okay.

5 Let's proceed. I don't have an
6 issue. We're just discussing whether or not
7 the proper authorization form had been
8 completed. And in here in Form 135 there's an
9 authorization which we'll accept if anyone
10 doesn't have a problem with that -- any
11 objections with anyone.

12 This has been our day of not having
13 Forms 120 complete.

14 Oh, you've got a 120 in here. Okay.
15 Okay.

16 All right. So let's proceed then.

17 It's a request for an area variance
18 from building height, lot occupancy, side yard
19 and nonconforming structure to a single-family
20 dwelling.

21 Before we begin, let me deviate and

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1 ask the Office of Planning, is there an issue
2 with Section 401, do you know?

3 MR. JACKSON: Well, we noted that
4 the Applicant requested that relief. And there
5 is no ability to acquire additional land to meet
6 the requirements of 401, and that the
7 development on both sides. And even if they
8 were to acquire property to the rear, that still
9 would not address the width. So there's no
10 issue with that relief.

11 CHAIRPERSON JORDAN: There is not
12 an issue then?

13 MR. JACKSON: No. Because they
14 would not be able to acquire -- there's no way
15 that they can meet the requirement given the
16 fact that both properties on either side are
17 developed, and those properties are also
18 nonconforming.

19 CHAIRPERSON JORDAN: Okay. All
20 right.

21 So then the relief requested is

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1 simply the relief for the building height and
2 lot occupancy and the side yard and the
3 nonconforming structure?

4 MR. JACKSON: Well, the building
5 height is not going to be changed by this
6 proposal.

7 CHAIRPERSON JORDAN: Okay.

8 MR. JACKSON: However, they will be
9 and they're not to be extending the fourth floor,
10 I don't believe. I think the third floor
11 addition would create a deck that you could look
12 over from into the exterior. So they're not
13 violating the spirit of the regulations with
14 regard to the height.

15 CHAIRPERSON JORDAN: Okay.

16 MR. JACKSON: In other words, this
17 nonconforming will continue. It will not be
18 extended.

19 CHAIRPERSON JORDAN: Got it. So
20 we're just dealing with Section 403 and 405
21 relief requests for a variance. All right.

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1 Well, let me say before we begin.
2 The Office of Planning has recommended denial.
3 And in my initial review, I don't see anything
4 in the record that indicates any aspect of
5 support for what our requirements are for a
6 variance. And so, before you begin, I would
7 want you in your presentation to discuss the
8 requirements that there's an exceptional
9 situation or circumstance and the practical
10 difficulty. Because I saw nothing in here.
11 And I think probably OP also had some same kind
12 of questions with that and I know what kind of
13 dialogue.

14 And I don't know if the other Board
15 Members have any other thing that they want to
16 be sure that's addressed by the Applicant before
17 we proceed.

18 With that, you can begin. But I
19 particularly want you to hit those points
20 because there's nothing in their filings that
21 even touches upon those things.

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1 MS. VERBEKE: So as you know, it's
2 a single-family residence in an R-1-B area.
3 And it's one of three Wardman townhomes. It's
4 the one in the middle. They're actually sort
5 of built like duplexes. So it is an end unit
6 despite being in the middle.

7 And it was built in 1927. Both of
8 the neighbors on either side have similar
9 additions to the rear. The original house had
10 a second-story patio that our client still has,
11 and it just has a fabric awning over it. On
12 the second story, he would just like to enclose
13 that which is in keeping with what both of his
14 neighbors have done already in order to gain
15 more living space on the main living level.
16 The second story of this house is the main living
17 level. It's a little confusing.

18 On the first story, we are proposing
19 an addition on the rear. It's -- the white is
20 the existing house. And there's a two-story,
21 kind of stucco --

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1 CHAIRPERSON JORDAN: If you could
2 -- do we have those exhibits filed?

3 MS. VERBEKE: Yes.

4 CHAIRPERSON JORDAN: Okay. If you
5 can tell us which number or how they're
6 identified and we can kind of follow you.

7 MS. VERBEKE: I don't -- they're
8 -- it's sheet 1.4. And then the other sheets
9 we have are sheet 2.0 and 2.3. And they all
10 should be included.

11 So if you're looking at sheet 1.4
12 on the lowest-most plan, how I have it laid out
13 is the top is the existing site plan -- how the
14 house is currently without any changes. The
15 middle shows the side yard setbacks, and the
16 lower shows the lot occupancy. We are proposing
17 an about 365-square-foot addition to our lot
18 occupancy which is on both the first floor and
19 part of the second floor. There's no changes
20 on the third and fourth floor that apply for
21 zoning. Everything's interior on those levels.

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1 On the first floor, we're proposing
2 to put an addition on the rear to encapsulate
3 the space that is currently underneath of a
4 two-story piece of the building. The existing
5 plans show a two-story strip here that's on
6 pillars. We're enclosing that part to make a
7 new family room lounge area on the lower level
8 and squaring -- well, bounding actually the
9 corner. So we're taking the entire width of
10 the rear and creating a small addition on the
11 first floor that would have a patio deck area
12 above it on the second floor.

13 The owner is interested in making
14 this his long-term residence. He currently
15 resides in London. And he's had this house for
16 quite some time but he's been renting it out
17 to I believe the Costa Rican Embassy. It was
18 their residence. And now he wants to make it
19 his own. And he has grandchildren coming and
20 he's trying to enclose the lower area so that
21 it will make a safe place for them to play in

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1 all weather with access to the back yard. So
2 that's -- that's the reasoning for doing this.

3 And it's not much different than
4 what both of the neighbors have on either side.

5 In fact, the addition goes out no further than
6 what the Hamlins have which is on the connecting
7 side. They're number 1832 24th Street. And
8 we've been working with them and their
9 construction to create a better area in the back
10 yard.

11 MR. MANGAN: Now in addition to what
12 Jennifer mentioned about the Hamlin's addition
13 which is just currently coming to completion
14 right now, the Wardman townhouses were
15 originally built fairly cohesive to act as a
16 single duplex. We've been working with the
17 Hamlins in our design to try and integrate them
18 so that the work that they've been doing now
19 on the house there, we're trying to make it look
20 as if everything was happening concurrently so
21 that the houses maintain the unity that they

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1 had prior to all this construction.

2 ZC COMMISSIONER TURNBULL: So
3 they're adding on to theirs?

4 MR. MANGAN: That's correct.
5 That's correct, sir.

6 MS. VERBEKE: Theirs may have
7 already been done. But they have substantially
8 re-done the exterior sheathing. So for all
9 intents and purposes, it looks newer from the
10 outside. But I believe their area had been done
11 already in the 1980s -- 1824 which is
12 McClaugherty's residence. They applied for a
13 similar variance.

14 ZC COMMISSIONER TURNBULL: Okay.
15 Thank you.

16 CHAIRPERSON JORDAN: Are you
17 concluding your presentation?

18 MR. MANGAN: Yes. I suppose so.

19 MS. VERBEKE: I'm happy to answer
20 any questions you may have.

21 CHAIRPERSON JORDAN: Going back to

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1 my original statement to you, in your
2 presentation you didn't hit any of those points
3 that discussed the necessity of why you have
4 to have a variance or why you qualify for a
5 variance. And the requirements are pretty
6 specific.

7 It's not just that you want to put
8 something on the back of your home like an
9 extension or an addition and you come before
10 this Board and say this is what we want to do.

11 Does it look right? Can we do it? To get a
12 variance, there's certain requirements in order
13 to qualify for a variance.

14 And so, that is what I think is
15 missing. Maybe some other Board Member has
16 something that they think that they've heard.

17 Because I just --

18 ZC COMMISSIONER TURNBULL: No. I
19 would agree. The variance test is a three-prong
20 test. It's very difficult. There has to be
21 something very unique and significant in order

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1 for you to meet the requirements for a variance.

2 When you met with the Office of
3 Planning, did you talk about a special
4 exception? And I'm not sure whether they would
5 qualify for that.

6 MS. VERBEKE: No. No, we had not
7 talked about a special exception. We were
8 proceeding that the variance was what we were
9 able to apply for. And we spoke directly with
10 our ANC members regarding this. And they and
11 the community had no direct objections to this.

12 CHAIRPERSON JORDAN: Let me ask.
13 Have either one of you appeared before this Board
14 before requesting a variance?

15 MS. VERBEKE: Yes, I have.

16 CHAIRPERSON JORDAN: You have?
17 Okay.

18 If I can, Board, I'm going to deviate
19 just a little bit and have Office of Planning
20 kind of weigh in. And then we'll kind of go
21 back around. I think that might be very helpful

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1 for us, please.

2 MR. JACKSON: All right. Good
3 morning, Mr. Chairman and Members of the Board.

4 CHAIRPERSON JORDAN: I don't know
5 if you're on, Mr. Jackson.

6 MR. JACKSON: Good afternoon. I'm
7 sorry.

8 Mr. Chairman, Members of the Board,
9 my name is Arthur Jackson. I'm a development
10 review specialist in D.C. Office of Planning.

11 And I will brief some of the Office of
12 Planning's report which is before you.

13 We reviewed the application and
14 found with regard to the standards for variance
15 approval that the submission lacked in a number
16 of ways. The application actually referred to
17 the size of the lot as being irregular. But
18 given our review of the site, 18 of the 32 lots
19 or 56 percent of the properties also do not meet
20 the area and width requirements of the zoning
21 regulations.

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1 We looked at the entire line of the
2 slope of the property from the street to the
3 public alley. But we also note that that
4 characteristic is shared by neighboring
5 properties north and south of 24th Street. They
6 noted the inability to demolish the building
7 because it could create a practical difficulty.

8 But all but two of the buildings on the square
9 are contributing to either the Massachusetts
10 Avenue or they're shared in Kalorama historic
11 districts which eliminates that as being a
12 unique characteristic of the property.

13 We do note that this is one of only
14 two semi-detached dwelling on the site which
15 does make it unique. It's also a use that's
16 a type of dwelling that's not allowed in the
17 zoned district which is something to consider.

18 But we think the most notable
19 feature of the dwelling is that it exceeds the
20 lot occupancy and encroaches in the side yard
21 and exceeds the height limit both in feet and

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1 stories that are allowed in the zone district.

2 So the building has already a large envelope
3 -- larger than what's allowed in the zone
4 district.

5 So since there's so much potential
6 already on the site exceeding what currently
7 exists, we don't think that the characteristics
8 of this dwelling present a practical difficulty.

9 So that's our conclusion is that
10 there is no practical difficulty that has been
11 identified in this application. We do admit
12 that it does not appear that randomly for result
13 for the proposed addition and expansion would
14 be detrimental to public good. But we think
15 that the zoning regulations clearly do not
16 intend for existing dwelling that are currently
17 nonconforming to become even more
18 nonconforming.

19 We did note, however, that under the
20 223 process, the Applicant would be eligible
21 for various relief, and that the existing

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1 historic district regulations and zoning
2 regulations do not limit the Applicant from
3 making significant internal changes to the
4 building. We noted on our site visit that from
5 the street, you can see that both building
6 interiors were basically down to the structural
7 members. And there's a lot of work going on.

8 And while we understand desire of the property
9 owner for an addition, we do not think that it's
10 supported by the regulations in that this
11 property is clearly not unique.

12 So in terms of detriment to the
13 intent, purpose and integrity of zoning
14 regulations, zoning regulations are in place
15 to limit the size of the developments
16 specifically. We think that there is relief
17 available under 223 to reduce the side yard to
18 a certain amount, to increase the lot occupancy
19 to 50 percent which would allow an additional
20 100 square feet. But beyond that, we think that
21 it has not been adequately established that a

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1 practical difficulty associated with the
2 property -- existing property -- exists which
3 is the first standard of variance approval.
4 And therefore we recommend denial.

5 CHAIRPERSON JORDAN: Any questions
6 of the Office of Planning?

7 Ms. MacMurray?

8 MEMBER MacMURRAY: Yes. Good
9 afternoon.

10 My first question -- you answered
11 and said in part that you offered them alternate
12 relief. Have you discussed with them -- have
13 they come back and provided any input about the
14 feasibility of going with the alternate
15 recommendation?

16 MR. JACKSON: Well, I made several
17 phone calls, but never got a response. So there
18 haven't been any conversations beyond -- I
19 believe they said that they met with the Office
20 of Planning. But I wasn't involved in those
21 initial meetings.

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1 CHAIRPERSON JORDAN: So to your
2 knowledge, the Office of Planning, you've
3 attempted to have conversation about there's
4 another way to try to get to where they're trying
5 to get to, hadn't had any contact.

6 MR. JACKSON: Well, what I did was
7 simply ask them. We did talk about their
8 application.

9 CHAIRPERSON JORDAN: Okay.

10 MR. JACKSON: But I never got a
11 response.

12 CHAIRPERSON JORDAN: Did you talk
13 to anyone in the Office of Planning?

14 MR. MANGAN: Yes. We have no
15 record of any of that communication. So I --
16 this is the first we're hearing of an alternate
17 relief as a --

18 CHAIRPERSON JORDAN: I'm tempted
19 that we maybe roll this particular application
20 and give them a chance to meet with Office of
21 Planning.

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1 It's very important to be in contact
2 with the Office of Planning to try to discuss
3 some of these concerns and listen to what they
4 say. They have some ideas. You don't always
5 have to buy what they say or agree to what they're
6 saying. But this is what they do everyday.
7 And they're there to work with you as much as
8 possible within the bounds of the law to get
9 you as close as you can be or what relief you
10 may need to come to us to get.

11 I'm just going to guess. If we were
12 to proceed to close this hearing and to move
13 to a decision, it would not be one that's
14 favorable to you. But I would just suggest that
15 if the Board is acceptable to that idea that
16 we would just continue this to another date and
17 give you time to work with the Office of
18 Planning. Then you possibly might come up with
19 some ways to get you closer to where you want
20 to be.

21 How does the Board feel about that?

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1 MEMBER MacMURRAY: Good.

2 CHAIRPERSON JORDAN: And if it's
3 acceptable to you, I would continue this for
4 you. And since we have consent and continue
5 to a date, Mr. Moy, we're not that pressed on
6 the 30 days? Because the Applicants are also
7 agreeing to it.

8 MR. MOY: Right. The sense I'm
9 reading from the Board is to allow the Applicant
10 a chance to review the application for possibly
11 submitting it for a special exception, which
12 is the lesser relief on the variance tests.

13 And I would mention with regards to
14 notice requirements.

15 CHAIRPERSON JORDAN: Yes.

16 MR. MOY: So possibly if the
17 Applicant -- and I'm anticipating a lot of
18 different things here -- were to re-apply, I
19 would see it as amending your application.

20 So with that, Mr. Chairman, I would
21 leave to Applicant how much time they would need.

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1 Today is June the 19th. And a month, month
2 and a half?

3 CHAIRPERSON JORDAN: Yes. I think
4 probably a month and a half is probably something
5 that makes sense unless you're pressed for time.

6 I just want to make sure you have
7 enough time to meet with Planning, make any
8 adjustments that you need to do, re-work your
9 papers and submit it.

10 You're about to say something?

11 MR. MANGAN: Yes. Time will be
12 somewhat critical. At the moment, the owner
13 of the property is employed outside of the United
14 States, so my contact with him has been limited.

15 He's trying to move back into the United States
16 so time is of the essence. And I have him in
17 town in the near future so I'd like to be able
18 to react.

19 And I appreciate what's being
20 extended to us as an opportunity. I would need
21 to expedite that as quickly as possible. So

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1 the sooner I can make these things happen --
2 I can make design changes happen quickly on my
3 end, I know.

4 MR. MOY: Well, to help you work
5 that -- your scheduling part -- our last public
6 hearing before we go into August recess is July
7 31st. And I believe, Mr. Chairman, we can find
8 room on our docket any time in the month of July.

9 So I would say the middle of July?

10 MR. MANGAN: If that were an
11 opportunity, I would try for the middle of July
12 if I could. Yes, sir.

13 CHAIRPERSON JORDAN: And I would
14 also, Mr. Moy, looking at our July 31st public
15 meeting, I think we're not going to need that
16 much time for two special exceptions in the
17 morning of the 31st. So we can work some other
18 cases in and move that public hearings up, not
19 that we're doing this one or another one. But
20 I think July 24th, we just added a case to July
21 24th already.

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1 MR. MOY: For the morning session.

2 CHAIRPERSON JORDAN: Yes.

3 MR. MOY: Unless you want to add
4 this for the afternoon of the 24th.

5 Or as you just noted, we could
6 schedule it for the morning of July 31st as well.

7 So the Board has a number of options.

8 MR. MANGAN: If the 24th -- the
9 morning of the 24th were available and we're
10 okay with the Board, that would be our preference
11 here if that's possible.

12 CHAIRPERSON JORDAN: I'm thinking
13 about the afternoon of July -- is that 17th?

14 MR. MOY: Yes.

15 MR. MANGAN: Excellent. Yes.

16 CHAIRPERSON JORDAN: We have a
17 special exception and we have an appeal. And
18 if this is something that's going to go forward
19 as a special exception, I don't think we're going
20 to need that much time to do it.

21 Do you agree with that?

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1 MR. MOY: Yes, sir. Just to let you
2 know, Mr. Chairman, we do have a case in the
3 morning of the 17th that's been withdrawn which
4 would leave us with two cases in the morning
5 of the 17th.

6 CHAIRPERSON JORDAN: Okay.

7 MR. MOY: So this case probably
8 could fill that void.

9 CHAIRPERSON JORDAN: Okay. Great.

10 But I can't overemphasize enough
11 that you need to meet with Office of Planning
12 on this. So please schedule that right away.

13 I think Mr. Jackson's already very
14 helpful to work with you. He's reached out and
15 hasn't got any calls back which is not good at
16 all because that's why he reached out to somebody
17 to try to get this done.

18 So with this, we'll continue this
19 matter until July 17th, the morning thereof,
20 which is 9:30.

21 Is there any other business to come

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1 before the Board this afternoon?

2 MR. MOY: No, sir.

3 CHAIRPERSON JORDAN: Great. I
4 don't have any special announcements, do I?
5 No special announcements.

6 Then we'll adjourn the public
7 hearing for today. Thank you.

8 (Whereupon, at 1:41 p.m., the
9 hearing was adjourned.)

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