

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY  
JULY 31, 2012

+ + + + +

The Regular Public Meeting  
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 1:14 p.m., Lloyd Jordan,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist  
D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:  
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

STEPHEN GYOR

The transcript constitutes the  
minutes from the Public Meeting held on July  
31, 2012.

TABLE OF CONTENTS

PAGE

Call to Order, Chairperson Jordan . . . . . 4

Preliminary Matters . . . . . 5

Request for Two-Year Time Extension of  
Application No. 18064 of HAI Real  
Estate Holdings, LLC. . . . . 6

Continued to September 25, 2012 . . . . 10

Party Opposition's (Matthew and Susan  
Finston) Request for Reconsideration  
of Application No. 18294 of Paul and  
Emily Thornell. . . . . 10

Vote to deny the rehearing. . . . . 15

Vote to deny the opposition's motion  
for reconsideration . . . . . 25

ADJOURN, Chairperson Jordan . . . . . 26

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

2 1:14 p.m.

3 CHAIRPERSON JORDAN: Good

4 afternoon, ladies and gentlemen. We are  
5 located at the Jerrily R. Kress Memorial  
6 Hearing Room at 441 4th Street, N.W. Today's  
7 date is July 31st. We are here for the public  
8 meeting of the Board of Zoning Adjustment for  
9 the District of Columbia.

10 My name is Lloyd Jordan,  
11 Chairperson of the Board. To my right is  
12 Rashida MacMurray, Board Member. To her right  
13 Jeffrey Hinkle, Board Member.

14 Please be advised this proceeding  
15 is being recorded by a court reporter and is  
16 also being webcast live. Therefore, I must  
17 ask you to refrain from any disruptive noises  
18 or actions in the hearing room.

19 Today's agenda is for the Board to  
20 render decisions on cases that under the  
21 regulations do not require a hearing. We'll  
22 handle any preliminary matters when the case

1 is called.

2 Mr. Secretary, are there any  
3 preliminary matters that we need to address?

4 MR. MOY: There are, Mr. Chairman,  
5 but staff would suggest that the Board address  
6 those after I call the case.

7 CHAIRPERSON JORDAN: For the  
8 record, would you indicate what happened to  
9 Case 18423 and 424, please?

10 MR. MOY: With pleasure, Mr.  
11 Chairman. These two cases, as Chairman has  
12 cited, Application No. 18423 of Linda M. Fobes  
13 and Application No. 18424 of Kent Street  
14 properties LLP, both of these cases were on  
15 the expedited review calendar and the  
16 Applicants for each cases have withdrawn their  
17 application, Mr. Chairman

18 CHAIRPERSON JORDAN: Thank you.  
19 With that, would you proceed to call our first  
20 case?

21 MR. MOY: Yes, sir. Good  
22 afternoon, Mr. Chairman, members of the Board.

1 The first of two cases for decision, the first  
2 being Application No. 18064 of HAI Real Estate  
3 Holdings, LLC.

4 This is a request by the Applicant  
5 for a two-year time extension pursuant to  
6 Section 3130 as well as a Waiver of Section  
7 3130.9 which, as the Board will recall, is the  
8 30-day filing of application prior to  
9 expiration of order.

10 The original application for the  
11 record was approved on May 18, 2010 pursuant  
12 to 11 DCMR 3104.1 for a special exception from  
13 the rear yard requirements under subsection  
14 774.5, and a special exceptio  
15 n from the parking requirements under  
16 subsection 2120.6, to allow an addition to an  
17 existing office building in the DC/C-3-C  
18 District at premises 1820-1822 Jefferson  
19 Place, N.W. Property located in Square 139,  
20 Lot 75.

21 The Applicant made its filing for  
22 the request for extension under Application

1 No. -- under Exhibit No., rather, 36. This  
2 was filed on Thursday, July 26, 2012. There  
3 are no other filings. The Board should recall  
4 that this was originally before the Board on  
5 July 10, 2012 and the Board requested  
6 additional supplemental information. It's  
7 under this Exhibit No. 36.

8 With that, the Board is to act on  
9 the merits of the request to extend pursuant  
10 to Subsection 3130, specifically Subsection  
11 3130.6, sub A through C. That completes the  
12 staff's briefing, Mr. Chairman.

13 CHAIRPERSON JORDAN: I do believe  
14 that the record reflects that the Board waived  
15 the 30-day filing requirement initially on  
16 this matter at the last setting for failure to  
17 file the application timely.

18 I've reviewed the record in this  
19 matter and I believe that this file is still  
20 deficient in many ways. We have some  
21 statements about -- we have some marketing  
22 material that we just simply received.

1                   However, there is an indication in  
2                   the application itself that due to financial  
3                   matters and some other hardships that the  
4                   Applicant could not within the time frame  
5                   required by law entertain the development,  
6                   begin the development.

7                   I think what we ought to do with  
8                   this is extend time again and have the  
9                   Applicant understand that we have to have  
10                  backup support for the allegations made,  
11                  something that's going to support financial  
12                  hardship or financial issue.

13                  What we have required before is  
14                  something that will support the financial  
15                  issue with letters from financial  
16                  institutions, support from maybe financial  
17                  brokers indicating that they tried to at least  
18                  attempt to seek financing and then were denied  
19                  based upon the conditions.

20                  That's just my initial thought.  
21                  Anybody else on the Board?

22                  Mr. Hinkle.

1                   MEMBER HINKLE: Thank you, Mr.  
2                   Chair. I tend to agree with you. It's  
3                   something that we requested from other  
4                   applicants that have been seeking similar time  
5                   extensions. I think it would be helpful for  
6                   us to make -- help inform us to make a final  
7                   decision.

8                   CHAIRPERSON JORDAN: So I would  
9                   offer on the Board's own motion, Mr.  
10                  Secretary, that we continue this to another  
11                  date. If you would notice -- is the Applicant  
12                  here for this matter? -- would notice the  
13                  Applicant of the information that we need and  
14                  put this on another calendar date.

15                  MR. MOY: Mr. Chairman, for the  
16                  Board to consider, as you are well aware,  
17                  August is our recess period. The next --

18                  CHAIRPERSON JORDAN: We can sneak  
19                  it in somewhere.

20                  MR. MOY: I was going to say the  
21                  next decision meeting is not until the  
22                  afternoon of September 25th unless the Board

1 wants to take this up as a special public  
2 meeting on September 11th.

3 CHAIRPERSON JORDAN: The 25th is  
4 fine. For the record, we've kind of carried  
5 this a couple of times and this should be our  
6 last time doing it.

7 Hopefully the Applicant will  
8 contact this office, the Office of Zoning, and  
9 find out what's necessary for what is almost  
10 a ministerial function in granting an  
11 extension. However, the record has to be  
12 sufficient in this regard and it's not.

13 With that, do we take that by  
14 consent? The motion is by consent.

15 MR. MOY: Okay. Very good. Thank  
16 you, Mr. Chairman.

17 The next and last application for  
18 decision, or rather a motion, before the Board  
19 is to Application No. 18294 of Paul and Emily  
20 Thornell. This is a party opposition's  
21 request (Matthew and Susan Finston) for  
22 reconsideration and rehearing pursuant to

1 Section 3126 of the Zoning Regulation.

2 The original application was  
3 approved on February 7, 2012, and issued on  
4 July 5, 2012, pursuant to 11 DCMR 3104.1 for  
5 a special exception to allow the construction  
6 of an addition to an existing one-family semi-  
7 detached dwelling under section 223 of the  
8 Zoning Regulations, not meeting the lot  
9 occupancy requirements under section 403, in  
10 the R-2 District at premises 3011 Ordway  
11 Street, N.W. Property located in Square 2067,  
12 Lot 76.

13 The party opposition filed their  
14 request on July 13, 2012 under Exhibit 43 in  
15 your case folders. In response, Mr. Chairman,  
16 the Applicant filed on Thursday, July 26,  
17 2012. That's under Exhibits 44 and 45.

18 In the Applicant's filing there is  
19 also a request for a waiver of their required  
20 seven-day requirement to file an answer in  
21 opposition or in support of the motion.

22 Finally, the last filing in your

1 case folder, Mr. Chairman, the party  
2 opposition filed on July 27th essentially  
3 citing the lot objection to the Applicant's  
4 time to response requirement. That is under  
5 Exhibit 46.

6 With that, what is before the  
7 Board is the Applicant's request to waive a  
8 seven-day requirement time under 3126.5. If  
9 so, then to act on the merits of the party  
10 opposition to request a reconsideration or  
11 rehearing. That completes the staff's  
12 briefing, Mr. Chairman.

13 CHAIRPERSON JORDAN: Thank you,  
14 Mr. Moy.

15 What we have before us initially  
16 is the motion by the Applicant to waive the  
17 10-day filing requirement. I would tend to  
18 think that we would do that, that there's no  
19 harm shown to anyone in regards to that  
20 filing. It would be my intent to honor that.

21 Anybody else on the Board?

22 MEMBER MacMURRAY: Mr. Chairman, I

1 would agree that there would be no bias in  
2 granting that extension.

3 CHAIRPERSON JORDAN: So unless  
4 there is anything contrary, I would offer by  
5 consent of the Board of all members that we  
6 would waive the 10-day filing.

7 That moves us to the motion  
8 itself. The earlier party in opposition filed  
9 a motion for rehearing or reconsideration of  
10 the Board's decision. I believe our decision  
11 was granted on -- what date was that? Was it  
12 the 13th?

13 MR. MOY: February 7th was the  
14 decision on this application.

15 CHAIRPERSON JORDAN: February 7th?

16 MR. MOY: 2012. The order wasn't  
17 issued until July 5th.

18 CHAIRPERSON JORDAN: July 5th. On  
19 the motion for rehearing, a rehearing should  
20 be considered when there is new evidence  
21 presented according to Section 3126 of the  
22 District of Columbia regulations. More

1 specifically, the Board of Zoning Adjustment  
2 is required to follow 3126.6 in this regard.

3 I've looked over the application  
4 and request for rehearing and I did not see  
5 any new evidence offered or any evidence which  
6 could not have been offered at the time of  
7 this hearing. This matter then duly noted as  
8 we indicated in the record at that time.

9 I don't see anything that would  
10 indicate why the subsequent letters submitted  
11 by the Applicant -- excuse me, the opposition,  
12 could not have been sent earlier as we had  
13 other neighbors indicating one way or the  
14 other their support or opposition to that  
15 particular application. I would be inclined  
16 not to grant a rehearing on this matter. I  
17 offer that to the Board as my thoughts on the  
18 issue.

19 Mr. Hinkle.

20 MEMBER HINKLE: Yes, Mr. Chairman.  
21 I tend to agree with you. I didn't see any  
22 additional evidence or new evidence that was

1 submitted in terms of this motion for a  
2 rehearing. I'm in agreement with your  
3 thoughts.

4 CHAIRPERSON JORDAN: Is there a  
5 will of the Board in this? Anyone want to  
6 make a motion?

7 MEMBER MacMURRAY: Mr. Chairman, I  
8 make a motion that we deny the reconsideration  
9 of the hearing --

10 CHAIRPERSON JORDAN: Rehearing.

11 MEMBER MacMURRAY: -- on July 5th.  
12 Can I get a second?

13 MEMBER HINKLE: I'll second.

14 CHAIRPERSON JORDAN: And the  
15 motion will be to deny the rehearing for  
16 reconsideration. All those in favor of  
17 denying the rehearing as requested by the  
18 party in opposition, signify by saying aye.

19 BOARD MEMBERS: Aye.

20 CHAIRPERSON JORDAN: Those opposed  
21 nay.

22 Mr. Secretary.

1                   MR. MOY: Yes. Staff would record  
2 the vote as three to zero to two, this on the  
3 motion of Ms. MacMurray to deny the request  
4 for a rehearing. Seconding the motion Mr.  
5 Hinkle. Also in support of the motion  
6 Chairman Jordan. Two other members not  
7 present with us today. Again, the final vote  
8 is three to zero to two. The motion carries.

9                   CHAIRPERSON JORDAN: I think we  
10 may have an absentee ballot.

11                   MR. MOY: Yes. Thank you. I  
12 stand corrected here. We do have one other  
13 member who participated, Ms. Marcie Cohen and  
14 her absentee ballot is to deny request for a  
15 rehearing. That will change the numbers to  
16 four to zero to one.

17                   CHAIRPERSON JORDAN: On the  
18 absentee ballot she has indicated that she has  
19 reviewed the record and all the documents in  
20 the file.

21                   MR. MOY: Absolutely, sir. Let me  
22 correct the vote count then. That would be

1 four to zero to one. Again, for the record,  
2 this is on the motion of Ms. MacMurray.

3 Seconding the motion was Mr.  
4 Hinkle. Also in support of the motion  
5 Chairman Jordan and Ms. Cohen by absentee  
6 ballot. No other members participating. So,  
7 again, the vote is four to zero to one.

8 CHAIRPERSON JORDAN: We move now  
9 since it was a joint motion for rehearing and  
10 one for reconsideration to look at the  
11 opposition's motion for reconsideration.

12 There was a number of alleged  
13 facts offered by the opposition, particularly  
14 I think it was cited over and over again that  
15 the alley was 15 feet wide, although there was  
16 nothing there to support it other than the  
17 general statement by the Applicant -- excuse  
18 me, by the opposition -- the Applicant moving  
19 the motion in that regard that this alley was  
20 15 feet.

21 There was no other evidence that  
22 was provided to show it was 15 feet. I don't

1 really think the alley width is important. I  
2 can talk about that a little bit later. I  
3 just want to go over what the facts were that  
4 the Applicant indicated. The I use the word  
5 Applicant at this point, I'm speaking about  
6 the movement of the motion to reconsider.

7 Then there was a lot of discussion  
8 in the documents basically addressing or  
9 concern about the Board's findings and some  
10 subjective allegations that the proposed  
11 addition would overpower the house and retain  
12 elements of the house materials, etc.

13 And it's, again, statements solely  
14 with no backup documentation to support other  
15 than the subjective rendering of the  
16 opposition party. There is nothing there that  
17 we can look at that was impactful as well as  
18 evidence other than just hearing the narrative  
19 by the opposition argue that particular point.

20 They also argued about the scale  
21 and incompatibility with the community. I  
22 think -- well, we'll talk about those

1       allegations in regards to what the Board's  
2       consideration was when it made its decision.

3               There was also conflicting  
4       evidence if you look at that so that is  
5       something certainly within the purview of the  
6       Board.  There were people in the community who  
7       supported this development and thought that it  
8       would not be contrary to the community and the  
9       scale was not imposing.

10              Then they raised the issue about  
11       the photos and documents and other things that  
12       have been submitted by the Applicant that  
13       were, in their view, arguably distorted or  
14       didn't properly -- or were misleading.  I  
15       think that is the word they used was  
16       misleading.

17              Therefore, the Board should not  
18       have properly relied on those things in its  
19       decision.  Again, it did not have anything  
20       that necessarily refuted that by any concrete  
21       evidence other than just opinion.

22              As I mentioned before, there were

1 other neighbors in this motion for  
2 reconsideration that submitted their letters  
3 which could have been presented before but was  
4 presented again -- was presented upon this  
5 motion for reconsideration which, again, as I  
6 said before, there were neighbors to the  
7 contrary that said it would not harm their use  
8 and enjoyment of their particular homes. The  
9 Board relied, again, on improper facts about  
10 the alley. The alley really was not any major  
11 impact in our decision.

12 There was other things raised that  
13 addressed the Board's finding that the  
14 property, its character, would intrude upon  
15 the scale and pattern of the neighborhood  
16 homes. There was nothing that supported that  
17 other than just the opinion of the Applicant,  
18 the Applicant to the motion.

19 Then there were some allegations  
20 that our findings omitted some things and  
21 didn't consider others. For instance, that  
22 there would be an additional increase in

1 noise. This home addition would impair the  
2 enjoyment of the neighbors, etc. Some of the  
3 things kind of over and over again and those  
4 things are just subjective kind of opinions.

5 Then there was an allegation that  
6 the Board misapplied the relevant regulations,  
7 rules, and standards in its conclusions of law  
8 and that we misapplied the law in regards to  
9 Section 223.1 on these type of changes for  
10 special exceptions, special conditions, etc.

11 Then there was a factor that --  
12 I'm trying to remember now. I think they said  
13 -- they indicated that great weight should not  
14 be given to the ANC, etc., in their document.  
15 Again, they are wrong because the law requires  
16 great weight to be given to the ANC. Our  
17 reliance on the ANC and Office of Planning's  
18 reports were erroneous and that we should not  
19 rely on those reports. I'm trying to think of  
20 my notes here.

21 Again, they reflect about the  
22 letters. Oh, the rear yard, that there is an

1 issue with the rear yard in the alley and the  
2 buffering issues. They indicated that what is  
3 in the order was misstated and not correct.

4 Is there any other thing that was  
5 raised in this motion that I might have left  
6 out, anyone?

7 Well, for the reasons stated, for  
8 instance, that there was no document  
9 supporting the -- most of the things that were  
10 raised, particularly overpowering the house in  
11 size was one that was very subjective. There  
12 is no factual basis that was submitted in the  
13 opposition's argument.

14 The issue about the alley, whether  
15 it was 15 feet, 13 feet, 12 feet or had no  
16 impact upon the decision that the Board  
17 rendered, whether or not that fact was correct  
18 or not. Then, again, there was nothing there  
19 to support their allegation of it  
20 substantially or even a basis where we should  
21 reconsider it. It was not a factor at all in  
22 our decision.

1                   Does the Board have anything else  
2                   in regards to this?

3                   Yes, Ms. MacMurray.

4                   MEMBER MacMURRAY: Mr. Chairman, I  
5                   think you provided an excellent overview and  
6                   summary of all of the issues that we  
7                   considered.

8                   I think for the record we do want  
9                   to note upon the fact that because the Board  
10                  may not find in favor of one party does not  
11                  mean that the Board has not considered all of  
12                  the evidence presented before us as well as  
13                  relying on the ANC as required under D.C. law,  
14                  as well as the Office of Planning.

15                  All the consideration and effort  
16                  that it takes to consider all of the different  
17                  facts is a very meticulous process. The  
18                  implication that the Board was very -- I guess  
19                  not very diligent in their preparation, I just  
20                  want to make note that is contrary to how we  
21                  proceed.

22                  MEMBER HINKLE: Mr. Chairman, I'll

1 just jump in real quick. I agree completely  
2 with Ms. MacMurray. She stated everything I  
3 was going to state. We did have a very long  
4 and contested hearing. I think the Board did  
5 consider all the evidence that was provided by  
6 all the parties to come up with our decision.

7 CHAIRPERSON JORDAN: And, again,  
8 over all there was nothing that really  
9 indicated facts that we had not considered.

10 Most of the things that were in  
11 this particular request for reconsideration  
12 were just subjective in nature or was within  
13 the discretion of the Board to render the  
14 facts based upon two different groups making  
15 competing kind of -- presenting competing  
16 evidence in regards to this matter.

17 It is certainly within the  
18 prerogative of this Board to weigh and make  
19 its decision as to what they believe was more  
20 likely than not. I would then move that we  
21 deny the reconsideration as requested by the  
22 Applicant.

1 MEMBER HINKLE: I'll second it.

2 CHAIRPERSON JORDAN: Motion made  
3 and seconded to deny the reconsideration  
4 submitted by the opposition in this matter.  
5 Any unreadiness? Seeing none, all those in  
6 favor of the motion signify by saying aye.

7 BOARD MEMBERS: Aye.

8 CHAIRPERSON JORDAN: Those opposed  
9 nay. The motion carries.

10 Mr. Moy.

11 MR. MOY: Mr. Chairman, before I  
12 read back the final vote, we do have an  
13 absentee ballot from Ms. Cohen and her  
14 absentee ballot is to deny the request for  
15 reconsideration. That would give a final vote  
16 of four to zero to one. This is on the motion  
17 of Chairman Jordan.

18 Seconding the motion Mr. Hinkle.  
19 Also in support of the motion Ms. MacMurray  
20 and, of course, Ms. Cohen. No other Board  
21 member present or voting today. Again, the  
22 final vote is four to zero to one to deny.

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CHAIRPERSON JORDAN: Thank you. I

guess we now then -- is there any other  
business to come before us for this public  
meeting?

MR. MOY: No, sir.

CHAIRPERSON JORDAN: Okay. Then  
what we are going to do is adjourn the public  
meeting and move into our public hearing.

(Whereupon, at 1:39 p.m. the  
meeting was adjourned.)

<p style="text-align: center;"><b>A</b></p> <p><b>absentee</b> 16:10,14 16:18 17:5 25:13 25:14</p> <p><b>Absolutely</b> 16:21</p> <p><b>act</b> 7:8 12:9</p> <p><b>actions</b> 4:18</p> <p><b>addition</b> 6:16 11:6 18:11 21:1</p> <p><b>additional</b> 7:6 14:22 20:22</p> <p><b>address</b> 5:3,5</p> <p><b>addressed</b> 20:13</p> <p><b>addressing</b> 18:8</p> <p><b>adjourn</b> 3:22 26:7</p> <p><b>adjourned</b> 26:10</p> <p><b>Adjustment</b> 1:4,16 4:8 14:1</p> <p><b>advised</b> 4:14</p> <p><b>afternoon</b> 4:4 5:22 9:22</p> <p><b>agenda</b> 4:19</p> <p><b>agree</b> 9:2 13:1 14:21 24:1</p> <p><b>agreement</b> 15:2</p> <p><b>allegation</b> 21:5 22:19</p> <p><b>allegations</b> 8:10 18:10 19:1 20:19</p> <p><b>alleged</b> 17:12</p> <p><b>alley</b> 17:15,19 18:1 20:10,10 22:1,14</p> <p><b>allow</b> 6:16 11:5</p> <p><b>ANC</b> 21:14,16,17 23:13</p> <p><b>answer</b> 11:20</p> <p><b>Anybody</b> 8:21 12:21</p> <p><b>Applicant</b> 6:4,21 8:4,9 9:11,13 10:7 11:16 12:16 14:11 17:17,18 18:4,5 19:12 20:17,18 24:22</p> <p><b>applicants</b> 5:16 9:4</p> <p><b>Applicant's</b> 11:18 12:3,7</p>	<p><b>application</b> 3:6,14 5:12,13,17 6:2,8 6:10,22 7:17 8:2 10:17,19 11:2 13:14 14:3,15</p> <p><b>approved</b> 6:11 11:3</p> <p><b>arguably</b> 19:13</p> <p><b>argue</b> 18:19</p> <p><b>argued</b> 18:20</p> <p><b>argument</b> 22:13</p> <p><b>ARTHUR</b> 2:12</p> <p><b>attempt</b> 8:18</p> <p><b>ATTORNEY</b> 1:22</p> <p><b>August</b> 9:17</p> <p><b>aware</b> 9:16</p> <p><b>aye</b> 15:18,19 25:6,7</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>back</b> 25:12</p> <p><b>backup</b> 8:10 18:14</p> <p><b>ballot</b> 16:10,14,18 17:6 25:13,14</p> <p><b>based</b> 8:19 24:14</p> <p><b>basically</b> 18:8</p> <p><b>basis</b> 22:12,20</p> <p><b>believe</b> 7:13,19 13:10 24:19</p> <p><b>bias</b> 13:1</p> <p><b>bit</b> 18:2</p> <p><b>Board</b> 1:4,16,18,18 4:8,11,12,13,19 5:5,22 6:7 7:3,4,5 7:8,14 8:21 9:16 9:22 10:18 12:7 12:21 13:5 14:1 14:17 15:5,19 19:6,17 20:9 21:6 22:16 23:1,9,11 23:18 24:4,13,18 25:7,20</p> <p><b>Board's</b> 9:9 13:10 18:9 19:1 20:13</p> <p><b>briefing</b> 7:12 12:12</p> <p><b>brokers</b> 8:17</p> <p><b>buffering</b> 22:2</p> <p><b>building</b> 6:17</p> <p><b>business</b> 26:3</p>	<p style="text-align: center;"><b>C</b></p> <p><b>C</b> 7:11</p> <p><b>calendar</b> 5:15 9:14</p> <p><b>call</b> 3:2 5:6,19</p> <p><b>called</b> 5:1</p> <p><b>carried</b> 10:4</p> <p><b>carries</b> 16:8 25:9</p> <p><b>case</b> 4:22 5:6,9,20 11:15 12:1</p> <p><b>cases</b> 4:20 5:11,14 5:16 6:1</p> <p><b>certainly</b> 19:5 24:17</p> <p><b>Chair</b> 9:2</p> <p><b>Chairman</b> 5:4,11 5:11,17,22 7:12 9:15 10:16 11:15 12:1,12,22 14:20 15:7 16:6 17:5 23:4,22 25:11,17</p> <p><b>Chairperson</b> 1:15 1:17 3:2,22 4:3,11 5:7,18 7:13 9:8,18 10:3 12:13 13:3 13:15,18 15:4,10 15:14,20 16:9,17 17:8 24:7 25:2,8 26:1,6</p> <p><b>change</b> 16:15</p> <p><b>changes</b> 21:9</p> <p><b>character</b> 20:14</p> <p><b>cited</b> 5:12 17:14</p> <p><b>citing</b> 12:3</p> <p><b>CLIFFORD</b> 1:21</p> <p><b>Cohen</b> 16:13 17:5 25:13,20</p> <p><b>Columbia</b> 1:2 4:9 13:22</p> <p><b>come</b> 24:6 26:3</p> <p><b>community</b> 18:21 19:6,8</p> <p><b>competing</b> 24:15 24:15</p> <p><b>completely</b> 24:1</p> <p><b>completes</b> 7:11 12:11</p> <p><b>concern</b> 18:9</p>	<p><b>conclusions</b> 21:7</p> <p><b>concrete</b> 19:20</p> <p><b>conditions</b> 8:19 21:10</p> <p><b>conflicting</b> 19:3</p> <p><b>consent</b> 10:14,14 13:5</p> <p><b>consider</b> 9:16 20:21 23:16 24:5</p> <p><b>consideration</b> 19:2 23:15</p> <p><b>considered</b> 13:20 23:7,11 24:9</p> <p><b>constitutes</b> 2:16</p> <p><b>construction</b> 11:5</p> <p><b>contact</b> 10:8</p> <p><b>CONTENTS</b> 3:1</p> <p><b>contested</b> 24:4</p> <p><b>continue</b> 9:10</p> <p><b>Continued</b> 3:9</p> <p><b>contrary</b> 13:4 19:8 20:7 23:20</p> <p><b>convened</b> 1:13</p> <p><b>correct</b> 16:22 22:3 22:17</p> <p><b>corrected</b> 16:12</p> <p><b>count</b> 16:22</p> <p><b>couple</b> 10:5</p> <p><b>course</b> 25:20</p> <p><b>court</b> 4:15</p> <hr/> <p style="text-align: center;"><b>D</b></p> <p><b>date</b> 4:7 9:11,14 13:11</p> <p><b>DCMR</b> 6:12 11:4</p> <p><b>DC/C-3-C</b> 6:17</p> <p><b>decision</b> 6:1 9:7,21 10:18 13:10,10,14 19:2,19 20:11 22:16,22 24:6,19</p> <p><b>decisions</b> 4:20</p> <p><b>deficient</b> 7:20</p> <p><b>denied</b> 8:18</p> <p><b>deny</b> 3:17,18 15:8 15:15 16:3,14 24:21 25:3,14,22</p> <p><b>denying</b> 15:17</p>	<p><b>detached</b> 11:7</p> <p><b>development</b> 8:5,6 19:7</p> <p><b>different</b> 23:16 24:14</p> <p><b>diligent</b> 23:19</p> <p><b>discretion</b> 24:13</p> <p><b>discussion</b> 18:7</p> <p><b>disruptive</b> 4:17</p> <p><b>distorted</b> 19:13</p> <p><b>District</b> 1:2 4:9 6:18 11:10 13:22</p> <p><b>document</b> 21:14 22:8</p> <p><b>documentation</b> 18:14</p> <p><b>documents</b> 16:19 18:8 19:11</p> <p><b>doing</b> 10:6</p> <p><b>due</b> 8:2</p> <p><b>duly</b> 14:7</p> <p><b>dwelling</b> 11:7</p> <p><b>D.C</b> 1:14,22 23:13</p> <hr/> <p style="text-align: center;"><b>E</b></p> <p><b>earlier</b> 13:8 14:12</p> <p><b>effort</b> 23:15</p> <p><b>elements</b> 18:12</p> <p><b>Emily</b> 3:15 10:19</p> <p><b>enjoyment</b> 20:8 21:2</p> <p><b>entertain</b> 8:5</p> <p><b>erroneous</b> 21:18</p> <p><b>ESQ</b> 1:23</p> <p><b>essentially</b> 12:2</p> <p><b>Estate</b> 3:7 6:2</p> <p><b>evidence</b> 13:20 14:5,5,22,22 17:21 18:18 19:4 19:21 23:12 24:5 24:16</p> <p><b>excellent</b> 23:5</p> <p><b>exceptio</b> 6:14</p> <p><b>exception</b> 6:12 11:5</p> <p><b>exceptions</b> 21:10</p> <p><b>excuse</b> 14:11 17:17</p> <p><b>Exhibit</b> 7:1,7 11:14</p>
--	--	---	---	--

12:5 <b>Exhibits</b> 11:17 <b>existing</b> 6:17 11:6 <b>expedited</b> 5:15 <b>expiration</b> 6:9 <b>extend</b> 7:9 8:8 <b>extension</b> 3:5 6:5 6:22 10:11 13:2 <b>extensions</b> 9:5	<b>follow</b> 14:2 <b>four</b> 16:16 17:1,7 25:16,22 <b>frame</b> 8:4 <b>function</b> 10:10	<b>Hopefully</b> 10:7 <b>house</b> 18:11,12 22:10	12:13 13:3,15,18 15:4,10,14,20 16:6,9,17 17:5,8 24:7 25:2,8,17 26:1,6 <b>July</b> 1:10 2:17 4:7 7:2,5 11:4,14,16 12:2 13:17,18 15:11 <b>jump</b> 24:1	<b>marketing</b> 7:21 <b>material</b> 7:22 <b>materials</b> 18:12 <b>matter</b> 7:16,19 9:12 14:7,16 24:16 25:4 <b>matters</b> 3:3 4:22 5:3 8:3 <b>Matthew</b> 3:12 10:21 <b>mean</b> 23:11 <b>meeting</b> 1:6,12 2:17 4:8 9:21 10:2 11:8 26:4,8 26:10 <b>member</b> 1:18,18 4:12,13 9:1 12:22 14:20 15:7,11,13 16:13 23:4,22 25:1,21 <b>members</b> 1:16 5:22 13:5 15:19 16:6 17:6 25:7 <b>Memorial</b> 1:13 4:5 <b>mentioned</b> 19:22 <b>merits</b> 7:9 12:9 <b>meticulous</b> 23:17 <b>ministerial</b> 10:10 <b>minutes</b> 2:17 <b>misapplied</b> 21:6,8 <b>misleading</b> 19:14 19:16 <b>misstated</b> 22:3 <b>motion</b> 3:18 9:9 10:14,18 11:21 12:16 13:7,9,19 15:1,6,8,15 16:3,4 16:5,8 17:2,3,4,9 17:11,19 18:6 20:1,5,18 22:5 25:2,6,9,16,18,19 <b>move</b> 17:8 24:20 26:8 <b>movement</b> 18:6 <b>moves</b> 13:7 <b>moving</b> 17:18 <b>Moy</b> 1:21 5:4,10,21	
<b>F</b>	<b>G</b>	<b>I</b>	<b>K</b>	<b>L</b>	
<b>fact</b> 22:17 23:9 <b>factor</b> 21:11 22:21 <b>facts</b> 17:13 18:3 20:9 23:17 24:9 24:14 <b>factual</b> 22:12 <b>failure</b> 7:16 <b>favor</b> 15:16 23:10 25:6 <b>February</b> 11:3 13:13,15 <b>feet</b> 17:15,20,22 22:15,15,15 <b>file</b> 7:17,19 11:20 16:20 <b>filed</b> 7:2 11:13,16 12:2 13:8 <b>filing</b> 6:8,21 7:15 11:18,22 12:17,20 13:6 <b>filings</b> 7:3 <b>final</b> 9:6 16:7 25:12 25:15,22 <b>Finally</b> 11:22 <b>financial</b> 8:2,11,12 8:14,15,16 <b>financing</b> 8:18 <b>find</b> 10:9 23:10 <b>finding</b> 20:13 <b>findings</b> 18:9 20:20 <b>fine</b> 10:4 <b>Finston</b> 3:13 10:21 <b>first</b> 5:19 6:1,1 <b>Fobes</b> 5:12 <b>folder</b> 12:1 <b>folders</b> 11:15	<b>general</b> 1:22 17:17 <b>gentlemen</b> 4:4 <b>give</b> 25:15 <b>given</b> 21:14,16 <b>GLAZER</b> 1:23 <b>go</b> 18:3 <b>going</b> 8:11 9:20 24:3 26:7 <b>good</b> 4:3 5:21 10:15 <b>GOVERNMENT</b> 1:1 <b>grant</b> 14:16 <b>granted</b> 13:11 <b>granting</b> 10:10 13:2 <b>great</b> 21:13,16 <b>groups</b> 24:14 <b>guess</b> 23:18 26:2 <b>GYOR</b> 2:13	<b>increase</b> 20:22 <b>indicate</b> 5:8 14:10 <b>indicated</b> 14:8 16:18 18:4 21:13 22:2 24:9 <b>indicating</b> 8:17 14:13 <b>indication</b> 8:1 <b>inform</b> 9:6 <b>information</b> 7:6 9:13 <b>initial</b> 8:20 <b>initially</b> 7:15 12:15 <b>instance</b> 20:21 22:8 <b>institutions</b> 8:16 <b>intent</b> 12:20 <b>intrude</b> 20:14 <b>issue</b> 8:12,15 14:18 19:10 22:1,14 <b>issued</b> 11:3 13:17 <b>issues</b> 22:2 23:6	<b>Kent</b> 5:13 <b>kind</b> 10:4 21:3,4 24:15 <b>Kress</b> 1:13 4:5	<b>ladies</b> 4:4 <b>law</b> 8:5 21:7,8,15 23:13 <b>left</b> 22:5 <b>letters</b> 8:15 14:10 20:2 21:22 <b>Linda</b> 5:12 <b>little</b> 18:2 <b>live</b> 4:16 <b>LLC</b> 3:7 6:3 <b>Lloyd</b> 1:14,17 4:10 <b>LLP</b> 5:14 <b>located</b> 4:5 6:19 11:11 <b>long</b> 24:3 <b>look</b> 17:10 18:17 19:4 <b>looked</b> 14:3 <b>lot</b> 6:20 11:8,12 12:3 18:7	<b>ladies</b> 4:4 <b>law</b> 8:5 21:7,8,15 23:13 <b>left</b> 22:5 <b>letters</b> 8:15 14:10 20:2 21:22 <b>Linda</b> 5:12 <b>little</b> 18:2 <b>live</b> 4:16 <b>LLC</b> 3:7 6:3 <b>Lloyd</b> 1:14,17 4:10 <b>LLP</b> 5:14 <b>located</b> 4:5 6:19 11:11 <b>long</b> 24:3 <b>look</b> 17:10 18:17 19:4 <b>looked</b> 14:3 <b>lot</b> 6:20 11:8,12 12:3 18:7
<b>J</b>	<b>H</b>	<b>J</b>	<b>M</b>		
<b>JACKSON</b> 2:12 <b>JEFF</b> 1:18 <b>Jefferson</b> 6:18 <b>Jeffrey</b> 4:13 <b>Jerrily</b> 1:13 4:5 <b>JOHN</b> 1:21 <b>joint</b> 17:9 <b>Jordan</b> 1:14,17 3:2 3:22 4:3,10 5:7,18 7:13 9:8,18 10:3	<b>HAI</b> 3:6 6:2 <b>handle</b> 4:22 <b>happened</b> 5:8 <b>hardship</b> 8:12 <b>hardships</b> 8:3 <b>harm</b> 12:19 20:7 <b>hearing</b> 1:13 4:6,18 4:21 14:7 15:9 18:18 24:4 26:8 <b>held</b> 2:17 <b>help</b> 9:6 <b>helpful</b> 9:5 <b>Hinkle</b> 1:18 4:13 8:22 9:1 14:19,20 15:13 16:5 17:4 23:22 25:1,18 <b>Holdings</b> 3:7 6:3 <b>home</b> 21:1 <b>homes</b> 20:8,16 <b>honor</b> 12:20	<b>JACKSON</b> 2:12 <b>JEFF</b> 1:18 <b>Jefferson</b> 6:18 <b>Jeffrey</b> 4:13 <b>Jerrily</b> 1:13 4:5 <b>JOHN</b> 1:21 <b>joint</b> 17:9 <b>Jordan</b> 1:14,17 3:2 3:22 4:3,10 5:7,18 7:13 9:8,18 10:3	<b>M</b> <b>M</b> 5:12 <b>MacMURRAY</b> 1:18 4:12 12:22 15:7,11 16:3 17:2 23:3,4 24:2 25:19 <b>major</b> 20:10 <b>making</b> 24:14 <b>Marcie</b> 16:13		

9:15,20 10:15 12:14 13:13,16 16:1,11,21 25:10 25:11 26:5	<b>opposed</b> 15:20 25:8 <b>opposition</b> 11:13 11:21 12:2,10 13:8 14:11,14 15:18 17:13,18 18:16,19 25:4 <b>opposition's</b> 3:12 3:18 10:20 17:11 22:13 <b>order</b> 3:2 6:9 13:16 22:3 <b>Ordway</b> 11:10 <b>original</b> 6:10 11:2 <b>originally</b> 7:4 <b>ought</b> 8:7 <b>overpower</b> 18:11 <b>overpowering</b> 22:10 <b>overview</b> 23:5	<b>premises</b> 6:18 11:10 <b>preparation</b> 23:19 <b>prerogative</b> 24:18 <b>present</b> 1:16,19,22 2:10 16:7 25:21 <b>presented</b> 13:21 20:3,4,4 23:12 <b>presenting</b> 24:15 <b>presiding</b> 1:15 <b>prior</b> 6:8 <b>proceed</b> 5:19 23:21 <b>proceeding</b> 4:14 <b>process</b> 23:17 <b>properly</b> 19:14,18 <b>properties</b> 5:14 <b>property</b> 6:19 11:11 20:14 <b>proposed</b> 18:10 <b>provided</b> 17:22 23:5 24:5 <b>public</b> 1:6,12 2:17 4:7 10:1 26:3,7,8 <b>pursuant</b> 1:14 6:5 6:11 7:9 10:22 11:4 <b>purview</b> 19:5 <b>put</b> 9:14 <b>P-R-O-C-E-E-D-...</b> 4:1 <b>p.m</b> 1:14 4:2 26:9	<b>received</b> 7:22 <b>recess</b> 9:17 <b>reconsider</b> 18:6 22:21 <b>reconsideration</b> 3:13,20 10:22 12:10 13:9 15:8 15:16 17:10,11 20:2,5 24:11,21 25:3,15 <b>record</b> 5:8 6:11 7:14,18 10:4,11 14:8 16:1,19 17:1 23:8 <b>recorded</b> 4:15 <b>reflect</b> 21:21 <b>reflects</b> 7:14 <b>refrain</b> 4:17 <b>refuted</b> 19:20 <b>regard</b> 10:12 14:2 17:19 <b>regards</b> 12:19 19:1 21:8 23:2 24:16 <b>Regular</b> 1:12 <b>Regulation</b> 11:1 <b>regulations</b> 4:21 11:8 13:22 21:6 <b>rehearing</b> 3:17 10:22 12:11 13:9 13:19,19 14:4,16 15:2,10,15,17 16:4,15 17:9 <b>relevant</b> 21:6 <b>reliance</b> 21:17 <b>relied</b> 19:18 20:9 <b>rely</b> 21:19 <b>relying</b> 23:13 <b>remember</b> 21:12 <b>render</b> 4:20 24:13 <b>rendered</b> 22:17 <b>rendering</b> 18:15 <b>reporter</b> 4:15 <b>reports</b> 21:18,19 <b>request</b> 3:5,13 6:4 6:22 7:9 10:21 11:14,19 12:7,10 14:4 16:3,14	24:11 25:14 <b>requested</b> 7:5 9:3 15:17 24:21 <b>require</b> 4:21 <b>required</b> 8:5,13 11:19 14:2 23:13 <b>requirement</b> 7:15 11:20 12:4,8,17 <b>requirements</b> 6:13 6:15 11:9 <b>requires</b> 21:15 <b>response</b> 11:15 12:4 <b>retain</b> 18:11 <b>review</b> 5:15 <b>reviewed</b> 7:18 16:19 <b>right</b> 4:11,12 <b>room</b> 1:13,13 4:6 4:18 <b>rules</b> 21:7 <b>R-2</b> 11:10
<hr/> <b>N</b> <hr/> <b>n</b> 6:15 <b>name</b> 4:10 <b>narrative</b> 18:18 <b>nature</b> 24:12 <b>nay</b> 15:21 25:9 <b>NCPC</b> 1:18 <b>necessarily</b> 19:20 <b>necessary</b> 10:9 <b>need</b> 5:3 9:13 <b>neighborhood</b> 20:15 <b>neighbors</b> 14:13 20:1,6 21:2 <b>new</b> 13:20 14:5,22 <b>noise</b> 21:1 <b>noises</b> 4:17 <b>note</b> 23:9,20 <b>noted</b> 14:7 <b>notes</b> 21:20 <b>notice</b> 1:14 9:11,12 <b>number</b> 17:12 <b>numbers</b> 16:15 <b>NYARKU</b> 1:21 <b>N.W</b> 1:14 4:6 6:19 11:11	<hr/> <b>P</b> <hr/> <b>PAGE</b> 3:1 <b>parking</b> 6:15 <b>participated</b> 16:13 <b>participating</b> 17:6 <b>particular</b> 14:15 18:19 20:8 24:11 <b>particularly</b> 17:13 22:10 <b>parties</b> 24:6 <b>party</b> 3:12 10:20 11:13 12:1,9 13:8 15:18 18:16 23:10 <b>pattern</b> 20:15 <b>Paul</b> 3:14 10:19 <b>people</b> 19:6 <b>period</b> 9:17 <b>photos</b> 19:11 <b>Place</b> 6:19 <b>Planning</b> 2:10 23:14 <b>Planning's</b> 21:17 <b>please</b> 4:14 5:9 <b>pleasure</b> 5:10 <b>point</b> 18:5,19 <b>preliminary</b> 3:3 4:22 5:3	<hr/> <b>Q</b> <hr/> <b>quick</b> 24:1	<hr/> <b>S</b> <hr/> <b>saying</b> 15:18 25:6 <b>scale</b> 18:20 19:9 20:15 <b>second</b> 15:12,13 25:1 <b>seconded</b> 25:3 <b>Seconding</b> 16:4 17:3 25:18 <b>Secretary</b> 1:21 5:2 9:10 15:22 <b>section</b> 6:6,6 11:1,7 11:9 13:21 21:9 <b>see</b> 14:4,9,21 <b>Seeing</b> 25:5 <b>seek</b> 8:18 <b>seeking</b> 9:4 <b>semi</b> 11:6 <b>sent</b> 14:12 <b>September</b> 3:9 9:22 10:2 <b>setting</b> 7:16 <b>seven-day</b> 11:20 12:8	
<hr/> <b>O</b> <hr/> <b>objection</b> 12:3 <b>occupancy</b> 11:9 <b>offer</b> 9:9 13:4 14:17 <b>offered</b> 14:5,6 17:13 <b>office</b> 1:19,22 2:10 6:17 10:8,8 21:17 23:14 <b>Oh</b> 21:22 <b>Okay</b> 10:15 26:6 <b>omitted</b> 20:20 <b>one-family</b> 11:6 <b>opinion</b> 19:21 20:17 <b>opinions</b> 21:4	<hr/> <b>R</b> <hr/> <b>R</b> 1:13 4:5 <b>raised</b> 19:10 20:12 22:5,10 <b>Rashida</b> 1:18 4:12 <b>read</b> 25:12 <b>real</b> 3:6 6:2 24:1 <b>really</b> 18:1 20:10 24:8 <b>rear</b> 6:13 21:22 22:1 <b>reasons</b> 22:7 <b>recall</b> 6:7 7:3	<hr/> <b>R</b> <hr/> <b>received</b> 7:22 <b>recess</b> 9:17 <b>reconsider</b> 18:6 22:21 <b>reconsideration</b> 3:13,20 10:22 12:10 13:9 15:8 15:16 17:10,11 20:2,5 24:11,21 25:3,15 <b>record</b> 5:8 6:11 7:14,18 10:4,11 14:8 16:1,19 17:1 23:8 <b>recorded</b> 4:15 <b>reflect</b> 21:21 <b>reflects</b> 7:14 <b>refrain</b> 4:17 <b>refuted</b> 19:20 <b>regard</b> 10:12 14:2 17:19 <b>regards</b> 12:19 19:1 21:8 23:2 24:16 <b>Regular</b> 1:12 <b>Regulation</b> 11:1 <b>regulations</b> 4:21 11:8 13:22 21:6 <b>rehearing</b> 3:17 10:22 12:11 13:9 13:19,19 14:4,16 15:2,10,15,17 16:4,15 17:9 <b>relevant</b> 21:6 <b>reliance</b> 21:17 <b>relied</b> 19:18 20:9 <b>rely</b> 21:19 <b>relying</b> 23:13 <b>remember</b> 21:12 <b>render</b> 4:20 24:13 <b>rendered</b> 22:17 <b>rendering</b> 18:15 <b>reporter</b> 4:15 <b>reports</b> 21:18,19 <b>request</b> 3:5,13 6:4 6:22 7:9 10:21 11:14,19 12:7,10 14:4 16:3,14	<hr/> <b>S</b> <hr/> <b>saying</b> 15:18 25:6 <b>scale</b> 18:20 19:9 20:15 <b>second</b> 15:12,13 25:1 <b>seconded</b> 25:3 <b>Seconding</b> 16:4 17:3 25:18 <b>Secretary</b> 1:21 5:2 9:10 15:22 <b>section</b> 6:6,6 11:1,7 11:9 13:21 21:9 <b>see</b> 14:4,9,21 <b>Seeing</b> 25:5 <b>seek</b> 8:18 <b>seeking</b> 9:4 <b>semi</b> 11:6 <b>sent</b> 14:12 <b>September</b> 3:9 9:22 10:2 <b>setting</b> 7:16 <b>seven-day</b> 11:20 12:8	

<b>SHERRY</b> 1:23 <b>show</b> 17:22 <b>shown</b> 12:19 <b>signify</b> 15:18 25:6 <b>similar</b> 9:4 <b>simply</b> 7:22 <b>sir</b> 5:21 16:21 26:5 <b>size</b> 22:11 <b>sneak</b> 9:18 <b>solely</b> 18:13 <b>South</b> 1:13 <b>speaking</b> 18:5 <b>special</b> 6:12,14 10:1 11:5 21:10 21:10 <b>Specialist</b> 1:21 <b>specifically</b> 7:10 14:1 <b>Square</b> 6:19 11:11 <b>staff</b> 1:19 2:10 5:5 16:1 <b>staff's</b> 7:12 12:11 <b>stand</b> 16:12 <b>standards</b> 21:7 <b>state</b> 24:3 <b>stated</b> 22:7 24:2 <b>statement</b> 17:17 <b>statements</b> 7:21 18:13 <b>STEPHEN</b> 2:13 <b>Street</b> 1:13 4:6 5:13 11:11 <b>sub</b> 7:11 <b>subjective</b> 18:10,15 21:4 22:11 24:12 <b>submitted</b> 14:10 15:1 19:12 20:2 22:12 25:4 <b>subsection</b> 6:13,16 7:10,10 <b>subsequent</b> 14:10 <b>substantially</b> 22:20 <b>sufficient</b> 10:12 <b>suggest</b> 5:5 <b>summary</b> 23:6 <b>supplemental</b> 7:6 <b>support</b> 8:10,11,14	8:16 11:21 14:14 16:5 17:4,16 18:14 22:19 25:19 <b>supported</b> 19:7 20:16 <b>supporting</b> 22:9 <b>Susan</b> 3:12 10:21 <hr/> <b>T</b> <b>TABLE</b> 3:1 <b>take</b> 10:1,13 <b>takes</b> 23:16 <b>talk</b> 18:2,22 <b>tend</b> 9:2 12:17 14:21 <b>terms</b> 15:1 <b>Thank</b> 5:18 9:1 10:15 12:13 16:11 26:1 <b>thing</b> 22:4 <b>things</b> 19:11,18 20:12,20 21:3,4 22:9 24:10 <b>think</b> 8:7 9:5 12:18 16:9 17:14 18:1 18:22 19:15 21:12 21:19 23:5,8 24:4 <b>Thornell</b> 3:15 10:20 <b>thought</b> 8:20 19:7 <b>thoughts</b> 14:17 15:3 <b>three</b> 16:2,8 <b>Thursday</b> 7:2 11:16 <b>time</b> 3:5 6:5 8:4,8 9:4 10:6 12:4,8 14:6,8 <b>timely</b> 7:17 <b>times</b> 10:5 <b>today</b> 16:7 25:21 <b>Today's</b> 4:6,19 <b>transcript</b> 2:16 <b>tried</b> 8:17 <b>trying</b> 21:12,19 <b>TUESDAY</b> 1:9 <b>two</b> 5:11 6:1 16:2,6	16:8 24:14 <b>two-year</b> 3:5 6:5 <b>type</b> 21:9 <hr/> <b>U</b> <b>understand</b> 8:9 <b>unreadiness</b> 25:5 <b>use</b> 18:4 20:7 <hr/> <b>V</b> <b>view</b> 19:13 <b>vote</b> 3:17,18 16:2,7 16:22 17:7 25:12 25:15,22 <b>voting</b> 25:21 <hr/> <b>W</b> <b>waive</b> 12:7,16 13:6 <b>waived</b> 7:14 <b>waiver</b> 6:6 11:19 <b>want</b> 15:5 18:3 23:8,20 <b>wants</b> 10:1 <b>Washington</b> 1:14 <b>wasn't</b> 13:16 <b>way</b> 14:13 <b>ways</b> 7:20 <b>webcast</b> 4:16 <b>weigh</b> 24:18 <b>weight</b> 21:13,16 <b>we'll</b> 4:21 18:22 <b>we've</b> 10:4 <b>wide</b> 17:15 <b>width</b> 18:1 <b>withdrawn</b> 5:16 <b>word</b> 18:4 19:15 <b>wrong</b> 21:15 <hr/> <b>Y</b> <b>yard</b> 6:13 21:22 22:1 <hr/> <b>Z</b> <b>zero</b> 16:2,8,16 17:1 17:7 25:16,22 <b>Zoning</b> 1:4,16,19 1:21 4:8 10:8 11:1,8 14:1	<hr/> <b>1</b> <b>1:14</b> 1:14 4:2 <b>1:39</b> 26:9 <b>10</b> 3:9,15 7:5 <b>10-day</b> 12:17 13:6 <b>11</b> 6:12 11:4 <b>11th</b> 10:2 <b>12</b> 22:15 <b>13</b> 11:14 22:15 <b>13th</b> 13:12 <b>139</b> 6:19 <b>15</b> 3:17 17:15,20,22 22:15 <b>18</b> 6:11 <b>18064</b> 3:6 6:2 <b>1820-1822</b> 6:18 <b>18294</b> 3:14 10:19 <b>18423</b> 5:9,12 <b>18424</b> 5:13 <hr/> <b>2</b> <b>20001</b> 1:14 <b>2010</b> 6:11 <b>2012</b> 1:10 2:18 3:9 7:2,5 11:3,4,14,17 13:16 <b>2067</b> 11:11 <b>2120.6</b> 6:16 <b>220</b> 1:13 <b>223</b> 11:7 <b>223.1</b> 21:9 <b>25</b> 3:9,20 <b>25th</b> 9:22 10:3 <b>26</b> 3:22 7:2 11:16 <b>27th</b> 12:2 <hr/> <b>3</b> <b>30-day</b> 6:8 7:15 <b>3011</b> 11:10 <b>31</b> 1:10 2:18 <b>31st</b> 4:7 <b>3104.1</b> 6:12 11:4 <b>3126</b> 11:1 13:21 <b>3126.5</b> 12:8 <b>3126.6</b> 14:2 <b>3130</b> 6:6 7:10 <b>3130.6</b> 7:11	<b>3130.9</b> 6:7 <b>36</b> 7:1,7 <hr/> <b>4</b> <b>4</b> 3:2 <b>4th</b> 1:13 4:6 <b>403</b> 11:9 <b>424</b> 5:9 <b>43</b> 11:14 <b>44</b> 11:17 <b>441</b> 1:13 4:6 <b>45</b> 11:17 <b>46</b> 12:5 <hr/> <b>5</b> <b>5</b> 3:3 11:4 <b>5th</b> 13:17,18 15:11 <hr/> <b>6</b> <b>6</b> 3:7 <hr/> <b>7</b> <b>7</b> 11:3 <b>7th</b> 13:13,15 <b>75</b> 6:20 <b>76</b> 11:12 <b>774.5</b> 6:14
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This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 07-31-12

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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Court Reporter

**NEAL R. GROSS**

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