

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY  
JULY 31, 2012

+ + + + +

The Regular Public Hearing  
convened in the Jerrily R. Kress Memorial  
Hearing Room, Room 220 South, 441 4th Street,  
N.W., Washington, D.C., 20001, pursuant to  
notice at 1:40 p.m., Lloyd Jordan,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

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:

KAREN THOMAS

ARTHUR ROGERS

STEPHEN GYOR

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

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

2 1:40 p.m.

3 CHAIRPERSON JORDAN: We'll now  
4 move into our public hearing for the day. We  
5 have already indicated our location. We're at  
6 the Jerrily R. Kress Memorial Hearing Room,  
7 441 4th Street, N.W. Today's date is July  
8 31st. We are here for the public hearing of  
9 the Board of Zoning Adjustment of the District  
10 of Columbia.

11 My name is Lloyd Jordan,  
12 Chairperson. To my left is Peter May, member  
13 of the Zoning Commission. To my right Rashida  
14 MacMurray, Board Member. To her right Jeffrey  
15 Hinkle, Board Member.

16 Again, please be advised that this  
17 proceeding is being recorded by a court  
18 reporter and also being webcast live.

19 Therefore, I'm going to ask you to refrain  
20 from any disruptive noises or actions in the  
21 hearing room. The Board's hearing procedures  
22 and how we will process applications can be

1 found on the table by the back door.

2 If there is anyone who is in the  
3 audience today that is going to provide  
4 testimony, would you please stand and raise  
5 your hand to take the affirmation or oath  
6 offered by the Secretary of the Board. If you  
7 are going to testify, you are going to have to  
8 be sworn.

9 Mr. Moy.

10 (Whereupon, the witnesses were  
11 sworn.)

12 CHAIRPERSON JORDAN: Let's do that  
13 one more time.

14 MR. MOY: One more time. All  
15 right. Once again.

16 CHAIRPERSON JORDAN: If you are  
17 going to speak to the Board, if you think  
18 there is going to be some reason why you are  
19 going to come to this table and speak to the  
20 Board, we need you to take an oath and all  
21 that stuff.

22 (Whereupon, the witnesses were

1 sworn.)

2 CHAIRPERSON JORDAN: Good. Thank  
3 you.

4 I am also going to ask that when  
5 you come to the witness table -- this is the  
6 witness table -- that you also complete two  
7 witness cards. Each person needs to complete  
8 two witness cards and then hand those things  
9 to the court reporter who is to my right.

10 Let's begin today's hearing  
11 agenda. Mr. Secretary, are there any  
12 preliminary matters that we need to address?

13 MR. MOY: No, sir.

14 CHAIRPERSON JORDAN: Let's call  
15 our first case, please.

16 MR. MOY: The first case would be  
17 Application No. 18385. This is the  
18 Application of Otis and Angela Ray pursuant to  
19 11 DCMR 3103.2, for a variance from the lot  
20 occupancy requirements under Section 403, and  
21 a variance from the nonconforming structure  
22 provisions under Subsection 2001.3, to allow

1 the construction of a pergola serving a one-  
2 family row dwelling in the R-4 District at  
3 premises 2100 1st Street, N.W. Property  
4 located in Square 3119, Lot 24.

5 CHAIRPERSON JORDAN: Thank you,  
6 Mr. Moy. Let me pause for one second.

7 Ms. Glazer.

8 There was a procedural deficiency  
9 noted in this application. The procedural  
10 deficiency issue actually arose in the  
11 measurement of the lot occupancy as far as  
12 what the Zoning Administrator calculated it to  
13 be versus what Office of Planning calculated  
14 it to be.

15 I just want to highlight these  
16 points because I don't know if it's going to  
17 be definitive generally of the issue in this  
18 matter because of the variances being  
19 requested. Either way the variance will be  
20 required so that point of it is not necessary  
21 for us to resolve beforehand.

22 I will also note that the Office

1 of Planning indicated that there is additional  
2 relief necessary for this to go forward and  
3 that would be relief from Section 401 for lot  
4 area, relief from Section 404 rear, and relief  
5 from Section 405 court.

6           However, I've gone through this  
7 record and I don't really see -- understand  
8 what's going on here. I know that this  
9 project is already completed. The Applicant  
10 is tending now to get us to grant the proper  
11 relief to allow for them to do that which they  
12 have already done.

13           However, I don't see any other  
14 things are necessary in the record for us to  
15 grant a variance. I see no discussion in  
16 anything in this record that indicated  
17 anything for a variance.

18           With that I want to call the  
19 parties to the table and understand that  
20 before we move forward. Could you introduce  
21 yourselves for the record, please? Push the  
22 button and you'll see a green light. Now give

1 your name, please.

2 MS. PRENTICE-RAY: Angela

3 Prentice --

4 CHAIRPERSON JORDAN: No. It's  
5 really bright when it's on. It looks like  
6 it's on but it's probably not.

7 MR. RAY: Otis Ray.

8 CHAIRPERSON JORDAN: Okay, Otis  
9 Ray. We have Otis Ray.

10 MS. PRENTICE-RAY: Angela  
11 Prentice-Ray.

12 CHAIRPERSON JORDAN: Is there  
13 anybody else in regards to this case, both in  
14 support or opposition in this matter?

15 And you're in support? And that's  
16 Angela --

17 MS. PRENTICE-RAY: Prentice.

18 CHAIRPERSON JORDAN: Prentice.  
19 Ms. Prentice, in relation to this case you  
20 are?

21 MS. PRENTICE-RAY: My husband and  
22 I bought the house at 2100 1st Street about

1 this time last year.

2 CHAIRPERSON JORDAN: I don't know  
3 how much you know but we're required to find  
4 before we can grant variances that you have to  
5 explain to us where there is exceptional  
6 circumstance or situation why this property is  
7 unique in a way and that you cannot comply  
8 with the Zoning Regulations and, therefore, we  
9 should grant you the relief.

10 The documents that you submitted  
11 basically said, "We've done this and we need  
12 your relief because this is the requirement  
13 for us to be there." It has missed the points  
14 that are necessary for us to do it. We can't  
15 just say, "Okay, it's fine."

16 We have to follow within the  
17 guidelines of the law and the law requires  
18 that there are some exceptional circumstances  
19 or that this property is particularly unique  
20 and, therefore, you have some difficulties,  
21 practical difficulties, in getting to comply  
22 with the Zoning Regulation.

1                   With that you can begin your  
2 presentation. Do you understand how we  
3 process here? You have the opportunity to  
4 present to us additional information. You  
5 submitted some things in writing to us.  
6 Office of Planning has weighed in and others.

7                   You have the opportunity to talk  
8 to us and tell us why you think we should  
9 grant it. If you do that, please bear in mind  
10 what I just said to you, what we really need  
11 to get our arms around. Do you have any  
12 questions? Do you understand what I mean?

13                   MS. PRENTICE-RAY: I think I  
14 understand.

15                   CHAIRPERSON JORDAN: Sure. Go  
16 ahead.

17                   MS. PRENTICE-RAY: If I could  
18 start by just giving a little background.

19                   CHAIRPERSON JORDAN: One second.  
20 Anything else any Board members need to have  
21 specifically raised? Okay.

22                   Sure. Go ahead.

1 MS. PRENTICE-RAY: As I mentioned,  
2 my husband and I moved here from New Jersey in  
3 April of last year and we bought the house at  
4 2100 1st Street. We started a number of  
5 projects including building the trellis. It  
6 took us about three months because we had so  
7 many other moving projects going on.

8 We had built a trellis at another  
9 house where we lived in another location and  
10 we didn't need a permit or we didn't have this  
11 kind of process. But in August when we were  
12 essentially complete in building it, an agent  
13 showed up from DCRA.

14 We didn't know what DCRA was at  
15 the time because we were new to DC. She  
16 mentioned that we needed to get a permit so we  
17 set out to get a permit. In that process we  
18 found that our trellis didn't conform because  
19 the boards are 16 inches apart.

20 I think you probably have  
21 pictures. The lateral boards on the top are  
22 16 inches apart. According to DCRA, that

1 would define it as a structure. It would have  
2 to be more than 24 inches on center.

3 In terms of why we think to answer  
4 your direct question, Chairman Jordan,  
5 according to the building code 16 inches on  
6 center defines it as a floor but under the  
7 Zoning Rule 11199 defines structure as  
8 anything constructed including a building the  
9 use of which requires permanent location on  
10 the ground or anything attached to something  
11 that has a permanent location on the ground.

12 This is not a permanent structure.  
13 It's not a room, it's a trellis. Future  
14 owners could remove it if they want to. It  
15 might be with some effort or cost but it's not  
16 permanent.

17 But beyond that, if it was  
18 considered a structure, the ruling 223 for  
19 Zoning relief allows a special exception from  
20 the Board subject to these provisions:

21 The light and air available to  
22 neighboring properties should not be affected

1 and it is not. The privacy, use, and  
2 enjoyment of neighboring properties shall not  
3 be unduly compromised, and it is not.

4 It goes on to talk about the  
5 addition of accessory structures and the  
6 visual intrusion of character, the pattern of  
7 houses. It's in the rear and it does not  
8 obstruct. We have a tremendous amount of  
9 support from our neighbors and the ANC.

10 The last provision for special  
11 exception is that it demonstrates that we  
12 provide graphical representation such as  
13 plans, photographs, elevation, and drawings to  
14 represent the relationship of the proposed  
15 addition to adjacent buildings.

16 My neighbors, who are here in  
17 support of us, are the neighbors who live  
18 closest to us and we've gotten a tremendous  
19 amount of support from them.

20 In addition to the ANC-5, who are  
21 very diligent, but they supported us  
22 unanimously, no contest. We received letters

1 of support from our nearest neighbors who like  
2 it and support it. We even have gotten  
3 unsolicited letters of support. Actually, the  
4 support has been overwhelming. We don't have  
5 any known opposition.

6 The reason that we are asking for  
7 the waiver is that we believe that taking out  
8 every other board to meet the DCRA requirement  
9 could jeopardize the structural integrity of  
10 the trellis. It's gone through an earthquake,  
11 several major storms without structural damage  
12 so safety for us is a priority.

13 CHAIRPERSON JORDAN: Excuse me  
14 just a second.

15 MS. PRENTICE-RAY: Sure.

16 CHAIRPERSON JORDAN: We're trying  
17 to get our arms around trying to get you where  
18 you need to be.

19 MS. PRENTICE-RAY: Okay.

20 CHAIRPERSON JORDAN: And so we're  
21 trying to be helpful.

22 MS. PRENTICE-RAY: Thank you.

1                   CHAIRPERSON JORDAN: We're trying  
2 to be helpful and we're trying to find how we  
3 can get there and so that is kind of what we  
4 are discussing, not to be rude. Is there  
5 anything else you want to tell us about what  
6 you -- I think we understand what you have and  
7 what you're doing so if there is nothing  
8 else --

9                   MS. PRENTICE-RAY: I would like to  
10 also say although the letter from the Office  
11 of Planning from Mr. Gyor wasn't in support  
12 because it is 16 inches on center, they did go  
13 on to say the requested variance would not  
14 result in substantial detriment to the public  
15 good and the requested variance would have no  
16 substantial harm to the Zoning Regulations.

17                   Our primary concern is safety. We  
18 don't want to go and start deconstructing it  
19 and have it be less stable.

20                   CHAIRPERSON JORDAN: If you're  
21 complete, I'm going to turn now to the Board  
22 to ask any questions that they may have.

1 Mr. May.

2 COMMISSIONER MAY: It's difficult  
3 to understand exactly what you built here  
4 because of what was submitted doesn't show a  
5 lot of information. I'm guessing that what we  
6 are seeing here in this trellis is a second  
7 floor trellis on top of a garage. Now, the  
8 garage existed when you bought the property?

9 MS. PRENTICE-RAY: Yes.

10 COMMISSIONER MAY: Okay.

11 MS. PRENTICE-RAY: And the patio  
12 existed.

13 COMMISSIONER MAY: The patio on  
14 top of the garage. Okay. So, in essence,  
15 what you were trying to do was capture some  
16 outdoor living space on top of the garage that  
17 already existed. Right? You were trying --  
18 I mean, there already was some living space  
19 there because it was a patio.

20 MS. PRENTICE-RAY: It was a patio.

21 COMMISSIONER MAY: You tried to  
22 put shade over it.

1 MS. PRENTICE-RAY: We tried to do  
2 natural shade.

3 COMMISSIONER MAY: Right. That's  
4 fine. I'm just trying to understand what you  
5 were faced with when you got it.

6 MS. PRENTICE-RAY: I have  
7 pictures.

8 COMMISSIONER MAY: Well, there are  
9 pictures that are in here. I think what I  
10 really wanted to confirm was that you didn't  
11 build the garage. The garage was there.

12 MS. PRENTICE-RAY: We did not  
13 build the garage or the patio. We just put  
14 the trellis on.

15 COMMISSIONER MAY: Right. Okay.  
16 So the property in Zoning parlance is  
17 nonconforming because of lot occupancy. In  
18 other words, you are already occupying more of  
19 the property than you would be allowed to do  
20 if you had just bought a vacant piece of land.  
21 You've got like 90 percent lot occupancy or  
22 something like that.

1 MS. PRENTICE-RAY: My  
2 understanding is that is the case generally in  
3 the neighborhood but it was grandfathered back  
4 to 50.

5 COMMISSIONER MAY: And that's  
6 fine. I mean, this is a very common  
7 circumstance. The fact that it's  
8 nonconforming is not a bad thing. It's a very  
9 common thing. It just means that you have to  
10 do things a certain way from here.

11 I think that is the only real  
12 question I had at this moment. I would be  
13 very interested in hearing why the Office of  
14 Planning thinks that relief from lot occupancy  
15 is necessary if it was a pre-existing  
16 condition.

17 CHAIRPERSON JORDAN: Does the  
18 Board have any other questions of the  
19 Applicant?

20 Let's turn to the Office of  
21 Planning if we may, please.

22 MR. GYOR: The Office of Planning

1 cannot support the Applicant's request for a  
2 variance in this case. We note that the  
3 Zoning Administrator's determination that a  
4 pergola with slats 16 inches on center  
5 constitutes a structure.

6 As we noted in our report, the  
7 pergola increases the lot occupancy of a  
8 previously nonconforming lot. Although the  
9 nonconformity is not increasing numerically,  
10 the addition of the pergola on top of the  
11 structure increases the volume or the extent  
12 of the nonconforming structure. In OP's view  
13 the intensity of the nonconformity is  
14 increasing through a vertical addition.

15 In addition, the Applicant's lot  
16 is not unique or exceptional. He does note,  
17 however, that the requested variance would not  
18 result in a substantial detriment to the  
19 public good and that the Applicant has the  
20 support of neighbors and the ANC.

21 OP would support modification of  
22 the pergola into a trellis by altering the

1 slats so that they are 24 inches on center and  
2 a trellis would not require relief.

3 CHAIRPERSON JORDAN: Questions of  
4 OP, please.

5 COMMISSIONER MAY: I have a  
6 follow-up question on this. In the years that  
7 I've done this and, I don't know, eight years  
8 or so that I've been on the Zoning Commission  
9 and heard lots of BZA cases, I don't think  
10 I've ever heard the argument that increasing  
11 the volume of the occupancy of the lot or the  
12 volume that is associated with the occupancy  
13 of the lot requires a variance from the lot  
14 occupancy.

15 I mean, I understand that it is a  
16 nonconforming structure and there is some  
17 relief that is needed in order to build an  
18 addition to a nonconforming structure but it's  
19 a different section of the Zoning Regs. I  
20 can't remember which one it is. I understand  
21 that relief. I don't understand lot occupancy  
22 because the lot occupancy isn't changing and

1 what is there must be grandfathered.

2 MR. GYOR: As we note in our  
3 report, we are trying to be consistent with  
4 the Zoning Administer's determination of what  
5 a structure would be.

6 COMMISSIONER MAY: I agree that  
7 it's a structure. I mean, the way they have  
8 constructed this, if they determine that 16  
9 inches on center makes it a structure, I agree  
10 it's a structure. It's equivalent of building  
11 an addition onto an existing nonconforming  
12 structure.

13 I agree that is the case but I  
14 don't understand why that leads to a needful  
15 relief from lot occupancy. It should lead to  
16 a special exception -- is that what it is? --  
17 for adding to a nonconforming structure. I  
18 mean, can you convince me otherwise?

19 MR. GYOR: As I stated, our view  
20 is that previously nonconforming where  
21 increasing the volume, the numerical value of  
22 the lot occupancy, is not changing.

1                   COMMISSIONER MAY:   Okay.  I mean,  
2                   volume I would understand if FAR were limited,  
3                   but FAR is not limited here.  Right?

4                   MR. GYOR:   Right.

5                   COMMISSIONER MAY:  I mean, this is  
6                   -- I don't know what the zone is.  It's an R-4  
7                   zone so you don't have a cap on FAR so volume  
8                   really doesn't enter into that calculation.

9                   MR. JACKSON:  Well, one thing is  
10                  that OP has consistently held that if you've  
11                  got a nonconforming ground floor and your  
12                  upper floor is not nonconforming, if you  
13                  continue the nonconformity upward, then you  
14                  are increasing the nonconformity.

15                  In this case we're reviewing the  
16                  introduction of the trellis which is counted  
17                  as a full structure as opposed to an open  
18                  structure as increasing the nonconformity by  
19                  extending through the occupiable space to the  
20                  second floor.

21                  COMMISSIONER MAY:  Okay.

22                  MR. JACKSON:  So that's how this

1 will be treated.

2 COMMISSIONER MAY: Now I'm  
3 understanding the logic of that so I  
4 appreciate that explanation. Again, I don't  
5 recall ever having encountered that before but  
6 certainly I'm not here every week.

7 MR. JACKSON: I think it's  
8 normally a case, for example, if we had an  
9 irregular court with a one-story building, if  
10 they put on a second story that continued the  
11 irregular court, then we would note that is  
12 extending the nonconformity.

13 We haven't had many cases where  
14 we've dealt with lot occupancy that way but we  
15 have with other types of lot dimensions.

16 COMMISSIONER MAY: Okay. What is  
17 the calculation of lot occupancy at the second  
18 floor level? Is that in the report somewhere?

19 MR. GYOR: That is not in the  
20 report.

21 COMMISSIONER MAY: Okay.

22 CHAIRPERSON JORDAN: But overall

1 you have -- what is your --

2 MR. GYOR: Overall we have  
3 approximately 90 percent lot occupancy.

4 CHAIRPERSON JORDAN: And you -- so  
5 this wouldn't be a special exception because  
6 it's over 70 percent? Is that why this can't  
7 go as a special exception?

8 MR. JACKSON: You mean as 223?

9 CHAIRPERSON JORDAN: Yes, 223.

10 COMMISSIONER MAY: Well, but we  
11 don't know whether it's 223 or not. Because  
12 it's got to bring it up to 90 percent? Do you  
13 think it's going to bring it up to 90 percent?

14 MR. GYOR: It's currently 90  
15 percent.

16 COMMISSIONER MAY: Well, that's on  
17 the ground floor.

18 MR. GYOR: Correct.

19 COMMISSIONER MAY: But it's on the  
20 second floor that we're --

21 CHAIRPERSON JORDAN: That's  
22 including the new use, the new expansion.

1 It's including your 90 percent.

2 MR. GYOR: Correct. It is 90  
3 percent based on the fact that we are  
4 including the court area which is less than  
5 five feet wide. The only portion of the  
6 property that is not included is the rear yard  
7 and I think it's about eight feet from the  
8 structure to the alley.

9 CHAIRPERSON JORDAN: Where is the  
10 difference between you and DCRA? DCRA has  
11 calculated it at 77 percent.

12 MR. GYOR: I think the difference  
13 is the court area which we are interpreting  
14 should count because it's less than five feet  
15 in width.

16 MS. PRENTICE-RAY: May I --

17 CHAIRPERSON JORDAN: One second.  
18 Any other questions of OP by the  
19 Board?

20 Yes, Ms. MacMurray.

21 MEMBER MacMURRAY: Thank you, Mr.  
22 Chairman.

1 My question is in the Applicant's  
2 testimony it stated that where you have  
3 requirements in the changes was to change it  
4 to 24 inches to make it more conforming and  
5 they expressed concern about the integrity of  
6 the structure.

7 Many times we have applicants come  
8 up and we are able to figure what would be the  
9 best structural integrity solution. If the 16  
10 inches are not possible, what other options  
11 would the Applicant have to be conforming?

12 MR. GYOR: In our view, we would  
13 suggest that the Applicant work with DCRA to  
14 evaluate the structural integrity of the  
15 pergola. We do note in our report that it is  
16 a concern. The structural integrity is  
17 something that should be weighed as a factor.  
18 Through the permitting process with DCRA that  
19 the Applicant could evaluate that.

20 CHAIRPERSON JORDAN: Any other  
21 questions of OP?

22 Let me ask a question. Have you

1 met with the Applicants?

2 MR. GYOR: I have.

3 CHAIRPERSON JORDAN: And you've  
4 discussed some alternatives with the  
5 Applicants?

6 MR. GYOR: I discussed -- we  
7 discussed the 16 inches versus 24 inches slats  
8 modifying the pergola.

9 CHAIRPERSON JORDAN: If there's no  
10 other questions of the Office of Planning, I'm  
11 going to turn to the Applicant and ask if you  
12 have any questions or something you want to  
13 say in regards to Office of Planning's report.

14 MS. PRENTICE-RAY: I just want to  
15 note that the Office of Planning and DCRA had  
16 different opinions on what we needed relief  
17 from. Their definition of structure in DCRA  
18 and Zoning's definition seems to be different.

19 To answer your question directly,  
20 we talked about the pergola and doing  
21 construction of it to get to 24. It's not as  
22 easy as taking out every other board. It's

1 basically reconstructing it because you would  
2 have to take the top off.

3 CHAIRPERSON JORDAN: Just right  
4 now if you want to ask any questions of the  
5 Office of Planning. I'm going to give you the  
6 opportunity to come and make a narrative.

7 MS. PRENTICE-RAY: I don't have  
8 any questions for Mr. Gyor. Thank you.

9 CHAIRPERSON JORDAN: Do we have  
10 anyone from the Department of Transportation?  
11 The ANC? Anyone here from the ANC -- what is  
12 it?

13 MS. PRENTICE-RAY: 5C.

14 CHAIRPERSON JORDAN: 5C. Do we  
15 have a representative of ANC-5C?

16 We do have a letter in our file  
17 that ANC-5C voted unanimously to support the  
18 approval for the variance and that they had a  
19 quorum present. Therefore, we would give  
20 great weight to their weigh-in of this matter.

21 Are there persons here in support  
22 of this application that want to testify? If

1 you would come to the table, you will get the  
2 opportunity to take up to three minutes if you  
3 want to say something to the Board in regards  
4 to support for this application if you want.  
5 Anybody want to do that?

6 Before you sit down, I need you to  
7 raise your right hand and take an oath or  
8 affirmation by the Board secretary.

9 (Whereupon, the witness was  
10 sworn.)

11 CHAIRPERSON JORDAN: And I also  
12 need -- I'm going to ask all of you, even the  
13 new gentleman who just came to the table, that  
14 you fill out the witness cards, two witness  
15 cards apiece. Then I'm going to ask you to  
16 give those to the court reporter.

17 Person in support, can you give us  
18 your name, please?

19 MR. BUSH: Theodore R. Bush --

20 CHAIRPERSON JORDAN: Bush?

21 MR. BUSH: Bush, Jr.

22 CHAIRPERSON JORDAN: Theodore R.

1 Bush, Jr. Mr. Bush, you have up to three  
2 minutes to talk to the Board and tell us your  
3 support for this particular application.

4 MR. BUSH: My address is 118 V as  
5 in Victor. I live diagonally across the  
6 street from --

7 CHAIRPERSON JORDAN: Please do me  
8 a favor and push the button.

9 MR. BUSH: My address is 118 V, as  
10 in Victor, Street, N.W., Washington, D.C. I  
11 am one that fully support Mr. and Mrs. Ray.  
12 In fact, I went around to the neighbors and  
13 had them sign a petition in support of Mr. and  
14 Mrs. Ray.

15 We see no harm in it. It's a  
16 beautiful structure. It adds to the community  
17 and to the block. As far as I know, no one on  
18 the block has any objection of the pergola  
19 being up.

20 We wish that you would grant a  
21 waiver for Mr. and Mrs. Ray because it's not  
22 causing any problems. It's not causing any

1 viewing. It's a beautiful structure and it  
2 does add to the community and to the block.

3 CHAIRPERSON JORDAN: We're still  
4 trying to work with this and we appreciate  
5 your testimony.

6 Any questions of the person in  
7 support?

8 We really appreciate the neighbors  
9 coming out and try to support or voice their  
10 concerns one way or the other. It really  
11 helps us in our decisions and what we're  
12 doing. Thank you, sir.

13 Are there any -- do you have any  
14 questions of the Applicant -- I mean, of the  
15 person in support?

16 MS. PRENTICE-RAY: No, just to  
17 thank him.

18 CHAIRPERSON JORDAN: Very good.

19 We have someone else who --

20 Mr. Bush, did you fill out the  
21 cards? You need to fill out two cards,  
22 please, and then give it to the gentleman in

1 the blue shirt, the court reporter, to the  
2 right.

3 Mr. Moy, I need you to -- we have  
4 a new person in support.

5 (Whereupon, the witness was  
6 sworn.)

7 CHAIRPERSON JORDAN: Would you  
8 give your name, please?

9 MS. BABINO: My name is Ada  
10 Babino, B-A-B-I-N-O.

11 CHAIRPERSON JORDAN: B-A-N --

12 MS. BABINO: B-A-B-I-N-O, Babino.

13 CHAIRPERSON JORDAN: Babino.

14 Thank you, Ms. Babino.

15 MS. BABINO: Yeah. I'm a neighbor  
16 directly across the alley from them. My  
17 address is 115 V Street so it's their house,  
18 the alley, and then my house.

19 I am fully in support of the  
20 variance, and also in support of the beautiful  
21 structure they have built. I've lived there  
22 over 25 years so I know that -- I was there

1 when there was no balcony on the garage, when  
2 there was nothing in the early '80s. The  
3 whole house has come a long way in terms of  
4 the beauty and the added value to the  
5 neighborhood.

6 This just adds another element to  
7 the entire block. It's a beautiful structure.  
8 I don't even understand the bureaucracy of  
9 this in terms of coming to court for this  
10 because it is causing no hurt, nothing  
11 negative to the neighborhood. Everything is  
12 positive.

13 Anything else at this point moving  
14 forward it would just be a lot of wasted time  
15 and money added to this whole situation. So  
16 I'm fully in support of it. Again, it adds  
17 beauty and value to the neighborhood. It's a  
18 nice structure. They're enjoying it immensely  
19 so I have nothing negative to say about it.  
20 That's it.

21 CHAIRPERSON JORDAN: We appreciate  
22 it. You are directly behind so --

1 MS. BABINO: I'm not behind.

2 CHAIRPERSON JORDAN: To the side?

3 MS. BABINO: Well, if you're  
4 calling it behind because their house faces  
5 1st Street.

6 CHAIRPERSON JORDAN: Okay.

7 MS. BABINO: 1st and V is the  
8 corner. I'm in the first alley house on V so  
9 I'm right there. It's right out my bedroom  
10 window.

11 CHAIRPERSON JORDAN: Thank you.

12 MS. BABINO: Thank you.

13 CHAIRPERSON JORDAN: Do we have  
14 anyone else? Yes, here we have someone else.

15 Mr. Moy.

16 MR. MOY: Yes, sir.

17 (Whereupon, the witness was  
18 sworn.)

19 CHAIRPERSON JORDAN: Please be  
20 sure to complete the witness cards. You need  
21 to complete two for us, please. If you would  
22 make sure the green light -- I think it's

1 already on. If you would state your name for  
2 the record.

3 MR. ROBINSON: My name is Ronny  
4 Robinson and I live at 119 V Street which is  
5 two houses away from Ada who just testified.

6 I, along with my partner, Joe  
7 Palmer, who is in the audience, are in 100  
8 percent support of the structure that the Rays  
9 have built. It's beautiful.

10 I admire that they put security  
11 first. They've done a beautiful job already  
12 but the fact that they are looking at this  
13 from a security perspective making sure that  
14 the addition is stable to me is the foremost  
15 priority.

16 Because of the way the structure  
17 is open, it would seem to me that taking away  
18 some of the supports on the top would diminish  
19 the security which I think is the most  
20 important aspect of this. That's all I wanted  
21 to emphasize, that the structure is secure  
22 and, as Angela said, has gone through a

1 hurricane, an earthquake, several storms.

2 CHAIRPERSON JORDAN: Has it -- let  
3 me ask a question. Was this in bad condition?  
4 Was the reason you had to put the top on it  
5 was because this thing was in a dangerous  
6 situation and the top kind of gives it more  
7 stability? Is that what I'm understanding?

8 MS. PRENTICE-RAY: The trellis was  
9 built with the top on it. It wasn't an  
10 addition to the trellis.

11 CHAIRPERSON JORDAN: So you didn't  
12 -- so there was not a need to make it more  
13 secure?

14 MS. PRENTICE-RAY: I built it  
15 secure from start to finish.

16 CHAIRPERSON JORDAN: You built it  
17 secure?

18 MS. PRENTICE-RAY: Right, from  
19 start to finish.

20 CHAIRPERSON JORDAN: And the  
21 condition -- I thought when you got there it  
22 was already began to be formed.

1 MS. PRENTICE-RAY: No. There was  
2 a garage with a patio on it, brick walls, and  
3 we just put a trellis up.

4 CHAIRPERSON JORDAN: Okay. Just  
5 trying to get there.

6 Any questions of Mr. Robinson  
7 anyone?

8 Thank you. We really appreciate.

9 MR. ROBINSON: Thank you.

10 CHAIRPERSON JORDAN: Anybody in  
11 the audience in opposition to this  
12 application? Anybody in opposition to this  
13 application who wants to speak? I do not see  
14 any. Please, again, we are going to need  
15 those cards for the court reporter. Thank  
16 you.

17 Now we'll turn back to the  
18 Applicant to do a closing statement or tell us  
19 something else that you want to tell us. We  
20 may have questions for you after you're  
21 finished again.

22 MS. PRENTICE-RAY: Okay. If we

1 had to build it over again knowing the process  
2 and knowing DCRA, we would definitely build it  
3 24 inches on center. But given that it is  
4 built, it would be a significant cost to us.  
5 It would cost almost as much to take out and  
6 space out boards. I mean, you can't slide  
7 them. You would have to do a level of  
8 deconstruction. It would be very costly for  
9 us.

10 CHAIRPERSON JORDAN: It would be  
11 very costly?

12 MS. PRENTICE-RAY: It would be  
13 very costly and time consuming. It's not a  
14 matter of taking out every other board.

15 CHAIRPERSON JORDAN: And it's not  
16 easy to take lose, is it?

17 MS. PRENTICE-RAY: Oh, no.

18 CHAIRPERSON JORDAN: It's very  
19 difficult for you to get back in compliance  
20 with the Zoning Regulations. It's going to be  
21 really difficult for you to do.

22 MS. PRENTICE-RAY: It would be

1 like rebuilding it.

2 CHAIRPERSON JORDAN: Cost wise  
3 what do you think it will cost? Is it  
4 something that will be difficult for you to  
5 make the cost to do it?

6 MS. PRENTICE-RAY: Given the other  
7 things we have going on it would. I talked  
8 with the person who helped us to put it up and  
9 he said roughly it would be \$5,000 to \$10,000  
10 if he would go in and unhammer, because they  
11 are nailed in, every other board. Then it  
12 would put it 35 inches on center which really  
13 would challenge the structural integrity so we  
14 would almost have to take the top off and  
15 rebuild it.

16 MEMBER MacMURRAY: So just to  
17 clarify, essentially it would end up costing  
18 you twice as much as what you currently spent  
19 to build it?

20 MS. PRENTICE-RAY: Pretty much.

21 COMMISSIONER MAY: Can I ask a  
22 question about the construction then. You

1 said somebody helped you build it or built it  
2 for you?

3 MS. PRENTICE-RAY: Yes, a  
4 contractor. We got together on the design and  
5 he actually did most of the manual work.

6 COMMISSIONER MAY: Okay. Did you  
7 have a contract with him to design this and  
8 make sure it was structurally sound and all  
9 that sort of stuff or did somebody else do  
10 that?

11 MS. PRENTICE-RAY: No, he did  
12 that.

13 COMMISSIONER MAY: Okay. I don't  
14 know what your contract says but it is common  
15 in a contract like that to have a provision  
16 that they would make sure that it meets the  
17 local codes and regulations.

18 If this is built -- I mean, if  
19 whoever had helped you build it, if they had  
20 actually done the design and had gone through  
21 the required permitting, they would have run  
22 into this and they would have realized, "Oh,

1 we just have to space the overhead elements at  
2 24 inches on center." Then it would be  
3 compliant with Zoning. I mean, you can pursue  
4 this whatever way you want but --

5 MS. PRENTICE-RAY: He's a friend  
6 of the family. He's a licensed contractor but  
7 not in D.C.

8 COMMISSIONER MAY: Right. Okay.

9 MS. PRENTICE-RAY: So he wasn't  
10 aware of DCRA either at the time.

11 COMMISSIONER MAY: Right.  
12 Unfortunately that doesn't really get you much  
13 in the way of relief the fact that it was done  
14 in this manner. I mean, the truth of the  
15 matter is if you had gotten an architect or an  
16 engineer to design this, it would be on them  
17 to understand the local codes and regulations  
18 and make sure that it complied with local  
19 Zoning, as well as would be structurally  
20 sound.

21 I'm certain that you can build  
22 something with 24 inches on center, the

1 vertical boards on the roof, or on the top of  
2 the trellis. You can build that 24 inches on  
3 center and it would be perfectly sound. It  
4 would probably be perfectly sound. I see  
5 there's diagonal bracing and stuff.

6 I'm an architect. I can see it's  
7 probably still going to be fine with that  
8 removed. It's just not going to look as good.  
9 I think that is probably a big consideration  
10 as well.

11 I think the real point of this is  
12 that we are in a quandary here because what  
13 you've done essentially is equivalent to  
14 building an addition onto the house, building  
15 an enclosed space on the house, and that is  
16 how the Zoning Regulations have to regard  
17 this. It would be the same.

18 We have to look at this and grant  
19 the relief as if it were okay for you to  
20 enclose this and make it into an addition.  
21 That is kind of the standard that we are  
22 having to go by and that is why it's

1       problematic for us. I'm not sure how we are  
2       going to see our way through that.

3                   MS. PRENTICE-RAY: I understand  
4       what you're saying. If I had it to do over,  
5       I certainly would have built it 24 inches on  
6       center.

7                   COMMISSIONER MAY: Right.

8                   MS. PRENTICE-RAY: But it would  
9       take a lot to get there at this point. I  
10      understand the intent of the law with the 16  
11      inches because it could be a floor but it's  
12      open spaced at the top and the sides. There  
13      is no way you could build a room and live on  
14      it.

15                  COMMISSIONER MAY: I understand  
16      that but that's --

17                  MS. PRENTICE-RAY: I understand  
18      the problem.

19                  COMMISSIONER MAY: You have to  
20      define a structure somehow and that is how  
21      they do it at DCRA. Once you've got  
22      structural members that are 16 inches on

1 center, it's equivalent -- it's no longer a  
2 trellis, it's a floor.

3 MS. PRENTICE-RAY: I understand.  
4 I understand the law. Also within the Zoning  
5 Regulations the structure is defined  
6 differently than DCRA. As I mentioned  
7 earlier, it wouldn't necessarily be defined as  
8 a structure according to the Zoning.

9 COMMISSIONER MAY: Well, I'm not  
10 sure.

11 MS. PRENTICE-RAY: Unless I'm  
12 interpreting that incorrectly.

13 COMMISSIONER MAY: Right. Well,  
14 here's the thing. What we have from DCRA is  
15 from the Zoning Administrator. This Board is  
16 responsible for granting variances and  
17 exceptions to the Zoning Regulations but the  
18 Zoning Administrator is the one who basically  
19 polices everything in the city that's built to  
20 make sure that it complies with Zoning. If  
21 the Zoning Administrative has said that this  
22 is a structure, we're not in a position to

1 opine that it's not a structure.

2 MS. PRENTICE-RAY: I understand.

3 CHAIRPERSON JORDAN: And it's not  
4 just the party that you put on the top. If it  
5 attaches to anything that is permanent like  
6 the garage. The garage is permanent.

7 MS. PRENTICE-RAY: I understand.  
8 I understand the ruling. I guess my summary  
9 comments would be that it would be -- we would  
10 have to kind of deconstruct it in order to get  
11 it to compliance.

12 It's not our intent to ever live  
13 on top of the trellis. I'm a gardener. I  
14 plant flowers and organic vegetables. This  
15 trellis was really a way to have the morning  
16 glories grow up and give us natural shade.  
17 It's never intended to be a room to live in.

18 CHAIRPERSON JORDAN: Who designed  
19 it? Did this contractor design it, too?

20 MS. PRENTICE-RAY: Actually, we  
21 bought the house from a couple that the  
22 husband was an architect and he had an

1 original design.

2 CHAIRPERSON JORDAN: Got it.

3 MS. PRENTICE-RAY: Which we  
4 modified somewhat.

5 CHAIRPERSON JORDAN: I was  
6 wondering if they would have known about the  
7 Zoning laws and requirements. That's why it's  
8 important to get that knowledge.

9 I think in regards to DCRA so you  
10 don't beat up on them, they probably didn't  
11 just happen by to see this. Somebody probably  
12 called them.

13 MS. PRENTICE-RAY: DCRA has been  
14 very supportive. I think someone did call.  
15 It would have been nice if they had just said,  
16 "You know, you need a permit for this," but  
17 instead someone called. In doing the survey  
18 and in getting support from the ANC, we didn't  
19 hear any voices of opposition.

20 CHAIRPERSON JORDAN: If there is  
21 nothing else, are there any questions of the  
22 Applicant? Then I am going to close this

1 hearing. Does the Board have an issue about  
2 moving to deliberation? My thought is about  
3 keeping this open and moving it to a decision  
4 date so we can do some further research and  
5 have some discussions because there are some  
6 questions.

7 Mr. May.

8 COMMISSIONER MAY: Yeah. I think  
9 I understand now better why the Office of  
10 Planning went in the direction of a variance.  
11 This affects my thinking about the case  
12 overall which is looking at what DCRA wrote,  
13 they said that this is contrary to Section  
14 2001.3 which addresses nonconforming  
15 structures and basically says that you can  
16 make an addition to enlargement to a  
17 nonconforming structure, or that we can grant  
18 a variance to do that but the structure shall  
19 conform to the percentage of lot occupancy  
20 requirements.

21 Therefore, in order to get the  
22 relief that DCRA says is necessary, which is

1 relief from 2001.3, we would have to -- under  
2 the terms of 2001.3 we would have to grant the  
3 lot occupancy variance. I understand that but  
4 I think the Office of Planning had the right  
5 intention but I don't think -- it didn't come  
6 across and didn't connect to what DCRA told us  
7 in this regulation.

8 I was trying to understand because  
9 I knew I had been in cases before where we had  
10 granted relief for additions to nonconforming  
11 structures. Most of them were probably under  
12 223 but I'm sure that there were ones that  
13 were in excess of 70 percent so they weren't  
14 under 223.

15 That meant giving relief to the  
16 underlying provisions having to do with lot  
17 occupancy and perhaps a nonconforming court or  
18 what have you. The relief extends from that  
19 point into needing the relief for what is  
20 otherwise an existing condition, an existing  
21 grandfathered condition.

22 Now that I understand it better, I

1 have a clear picture about why the Office of  
2 Planning believes this doesn't comply. I  
3 would be ready to move to deliberation now.  
4 I would also be happy to pick it up later if  
5 others want to consider the matter further.

6 CHAIRPERSON JORDAN: Others on the  
7 Board opinion, please?

8 Ms. MacMurray.

9 MEMBER MacMURRAY: I recommend  
10 that we postpone to conduct a little bit  
11 further research because it is an unusual case  
12 to make sure that we are able to give the  
13 proper relief to the Applicant if applicable.

14 COMMISSIONER MAY: Right. That's  
15 fine with me.

16 CHAIRPERSON JORDAN: Mr. Hinkle.

17 MEMBER HINKLE: Yes, Mr. Chairman.  
18 We did hear from the Applicant that there was  
19 a contract that was drawn up in terms of  
20 construction. There was also the issue of  
21 making changes to this would actually have a  
22 significant cost so it might be helpful to

1 have some additional information in terms of  
2 that cost as it relates to the original  
3 construction cost and what it would be like.

4 CHAIRPERSON JORDAN: I think what  
5 we will do is close the hearing. However,  
6 we'll keep the record open and ask the  
7 Applicant to supplement the record with  
8 anything that is going to help us further  
9 deliberate in regards to something that is  
10 unique about the property or special  
11 circumstances why you can't comply.

12 I think there is something there  
13 for us and I'm going to ask Office of the  
14 Attorney General to brief us on a couple of  
15 matters regarding the uniqueness in a reverse  
16 way, especially in light of that we cannot  
17 hold self-imposed hardships on the Applicant  
18 in area variances. Therefore, that is not  
19 before us so I wanted to keep the record open  
20 for that.

21 Additionally, we need to probably  
22 get some financial information regarding the

1 cost estimates or what it would cost to  
2 deconstruct the thing and all of that. Would  
3 that be helpful to you, Mr. Hinkle?

4 MEMBER HINKLE: (No response.)

5 CHAIRPERSON JORDAN: Is there  
6 anything else the Board would like to see?

7 Mr. Moy, what would be another  
8 date if we can -- we are done in August.

9 MR. MOY: That's right, sir. The  
10 Board's next decision meeting is the afternoon  
11 of the September 25th unless you want to do a  
12 special --

13 CHAIRPERSON JORDAN: If that's  
14 acceptable to you, it gives us time to try to  
15 work with what we need to do. I see a head  
16 nodding that is okay.

17 MS. PRENTICE-RAY: I'm sorry. I  
18 didn't hear you.

19 CHAIRPERSON JORDAN: September  
20 25th we'll put it on for a decision.

21 MR. MOY: Yes. September 25th in  
22 the afternoon.

1                   CHAIRPERSON JORDAN:  Then I'm  
2 going to ask that you get any additional  
3 information to us no later than September  
4 18th.

5                   MS. PRENTICE-RAY:  I need to  
6 clarify.  I heard Mr. Hinkle say we had a  
7 written contract.  We didn't have a written  
8 contract.

9                   CHAIRPERSON JORDAN:  But now we  
10 need to get something in writing what it would  
11 cost to go through this process in bringing  
12 this down, etc.

13                   MS. PRENTICE-RAY:  I understand.  
14 I didn't want to have a misconception.

15                   CHAIRPERSON JORDAN:  Appreciate.  
16                   Is there anything else for this  
17 particular case?  If not, I'm going to thank  
18 you and move on to the next case.

19                   MS. PRENTICE-RAY:  Thank you.

20                   MR. MOY:  The next application for  
21 the Board is Application No. 18389.  This is  
22 the application of Margaret Chase, pursuant to

1 11 DCMR 3104.1, for a special exception to  
2 establish an accessory apartment in an  
3 existing one-family detached dwelling under  
4 Subsection 202.10, in the R-1-B District at  
5 premises 1206 Crittenden Street, N.W.  
6 Property located in Square 2920, Lot 34.

7 CHAIRPERSON JORDAN: Would the  
8 parties for that case please come forward.  
9 The parties and persons in regards to this  
10 case.

11 Would you state your name for us,  
12 please?

13 MS. CHASE: Margaret Chase.

14 CHAIRPERSON JORDAN: I need you to  
15 complete two witness cards.

16 MS. CHASE: Okay.

17 CHAIRPERSON JORDAN: And give them  
18 to the court reporter. And your relation to  
19 this application is you are the owner?

20 MS. CHASE: I own the house, my  
21 husband and I.

22 CHAIRPERSON JORDAN: Okay. I

1 notice that this is before us on a special  
2 exception regarding Section 202.10 for  
3 allowing an accessory apartment and a waiver  
4 from -- an additional waiver is necessary in  
5 regards to 202.10 regarding the 25 percent of  
6 the floor area space for this because it's  
7 equaling 27 -- the percentage is 27 percent.  
8 We would need to amend your request if that is  
9 acceptable to you to add for the additional  
10 relief that's necessary.

11 MS. CHASE: Yes.

12 CHAIRPERSON JORDAN: I think the  
13 record is pretty full and understandable in  
14 this matter. I don't know if there is  
15 anything additional we need from you. I note  
16 that the ANC has voted and recommended  
17 approval and meet their criteria for great  
18 weight. The Office of Planning has also  
19 recommended approval.

20 Let me ask first anybody in  
21 opposition to this application here? Anyone  
22 here in support?

1                   Now I'm going to ask the Board is  
2                   there anything that they need to hear from the  
3                   Applicant on?

4                   Does OP have something that they  
5                   need to hear from the Applicant on?

6                   MR. JACKSON: Mr. Chairman, I just  
7                   wanted to note that the Applicant was in the  
8                   process of renovating the building at the time  
9                   and that their plans are to move in to make it  
10                  their permanent residence so it would be an  
11                  accessory use on the basement of the existing  
12                  dwelling.

13                  CHAIRPERSON JORDAN: Thanks. I  
14                  think we can make our decision without you  
15                  providing testimony. It's always your  
16                  opportunity and your right to provide  
17                  testimony if you want.

18                  You can tell us anything you want  
19                  to tell us or you can just let us make a  
20                  decision. I always warn people there's been  
21                  times they have talked themselves into  
22                  problems. With that then you waive any

1 hearing issues? Okay.

2 I would be inclined -- so I'll  
3 close the hearing and move into deliberation  
4 if that is the will of the Board. I would be  
5 inclined to grant the relief requested by the  
6 Applicant in addition to the requirement that  
7 the special exception include the excess of  
8 the 25 percent allowance. I will move that.

9 MEMBER MacMURRAY: I'll second.

10 MR. MOY: Motion made and seconded  
11 to grant the relief with the additional relief  
12 as stated. Any further discussions?

13 MEMBER HINKLE: Yes, Mr. Chairman.  
14 I think in our package we have a relatively  
15 poor floor plan. I think there was a request  
16 by the Office of Planning for the Applicant to  
17 submit a new floor plan.

18 CHAIRPERSON JORDAN: If you could  
19 update your floor plan for us, please.

20 MS. CHASE: You want me to just  
21 hand that to you?

22 CHAIRPERSON JORDAN: You can give

1 it to Mr. Moy.

2 MS. CHASE: I have an existing and  
3 a proposed. They are the same. We're not  
4 changing anything in the house.

5 CHAIRPERSON JORDAN: Is that what  
6 you need?

7 COMMISSIONER MAY: I think our  
8 copy was very bad. That's all.

9 CHAIRPERSON JORDAN: Good. All  
10 those in favor of the motion signify by saying  
11 aye.

12 BOARD MEMBERS: Aye.

13 CHAIRPERSON JORDAN: Those opposed  
14 nay. The motion carries.

15 Mr. Moy.

16 MR. MOY: Yes, sir. Staff would  
17 record the vote as four to zero to one. This  
18 is on the motion of Chairperson Jordan to  
19 approve the application as amended. Seconding  
20 the motion Ms. MacMurray. Also in support of  
21 the motion Mr. Peter May and Mr. Jeffrey  
22 Hinkle. No other members participating.

1 Again, the final vote is four to zero to one.

2 The motion carries.

3 CHAIRPERSON JORDAN: Thank you.

4 Mr. Moy, I think this is right for a summary  
5 order, please.

6 MR. MOY: Thank you.

7 CHAIRPERSON JORDAN: Thank you.

8 Then we would -- after you complete your last  
9 act of giving your cards to the court  
10 reporter, then this matter is over. If you  
11 would step to the side while we bring up the  
12 next case.

13 MS. CHASE: Thank you very much.

14 I just have a quick question. Will I be  
15 provided some --

16 CHAIRPERSON JORDAN: The order?

17 MS. CHASE: The order.

18 CHAIRPERSON JORDAN: Yes.

19 MS. CHASE: Okay. Can you mail  
20 that to me?

21 CHAIRPERSON JORDAN: Yes.

22 MS. CHASE: Sorry. I've never

1 done this before.

2 CHAIRPERSON JORDAN: Yes. You can  
3 ask Mr. Moy any questions you want, or go  
4 across the hall to the Office of Zoning. They  
5 will tell you everything you need to know.

6 MR. MOY: The next and last  
7 application for this afternoon's session, Mr.  
8 Chairman, is Application No. 18390. This is  
9 the application of Community Three  
10 Development, LLC, pursuant to 11 DCMR 3103.2,  
11 for a variance from the -- I'm going to read  
12 the original caption as advertised.

13 This is for a variance from the  
14 off-street parking requirements under  
15 Subsection 2101.1, to allow the conversion of  
16 an existing building into a 24-unit, four-  
17 story multi-family residential building in the  
18 C-2-A District at 435 R Street, N.W. Property  
19 located in Square 508, Lots 52, 53, and 66.

20 The Applicant on June the 15th,  
21 2012 filing amended his application and is now  
22 requesting, I believe, variance relief from

1 the drive aisle width under Section 2117.5 and  
2 a variance from the compact parking spaces, a  
3 number of spaces under Section 2215.

4 CHAIRPERSON JORDAN: Thank you.  
5 Do we have a motion to amend this application?  
6 Did we receive that or do you want to make an  
7 oral motion to amend?

8 MR. DONAHUE: I believe we did  
9 file it in the letter but, if not, Mr.  
10 Chairman, I would like to request that we  
11 modify the application as reflected by Mr.  
12 Moy's statement.

13 CHAIRPERSON JORDAN: If the Board  
14 doesn't have any issues, then we will grant  
15 that.

16 MR. DONAHUE: Yes, sir.

17 CHAIRPERSON JORDAN: Again, this  
18 is a matter that I think the record is full  
19 for me. I think it's very clear what you need  
20 and why you need it. We have letters of  
21 support from ANC-2C as well as Office of  
22 Planning. I think there might be one other

1 issue we need to talk about and that is the  
2 Department of Transportation's recommendation  
3 in this case.

4 Have you talked with the  
5 Department of Transportation?

6 MR. DONAHUE: We did have  
7 conversations with the Department of  
8 Transportation. I think, if you will permit  
9 me, Mr. Chairman, the comments and the  
10 recommendations from DDOT may reflect the  
11 earlier application which was a more  
12 aggressive relief.

13 CHAIRPERSON JORDAN: That makes  
14 sense.

15 MR. DONAHUE: What we are  
16 providing now are 11 spaces, two of which are  
17 compact but we have 11 for the 22 units. We  
18 are very close to being a by-right development  
19 and DDOT may be hearkening back to the earlier  
20 application.

21 CHAIRPERSON JORDAN: I was trying  
22 to think why we have that and that explains

1 it.

2 MR. DONAHUE: Yes, sir.

3 CHAIRPERSON JORDAN: Do Board  
4 members have any questions they need to ask  
5 this Applicant?

6 Yes, Mr. May.

7 COMMISSIONER MAY: I just want to  
8 ask -- I mean, we don't have complete plans  
9 for the whole building. I'm just trying to  
10 understand what it is. It's not really  
11 relevant to the relief. You have six units on  
12 the floor. Are they some form of studio  
13 apartments? Is that what they are?  
14 Otherwise, they've got landlocked bed rows.

15 MR. DONAHUE: Yes, they are.

16 COMMISSIONER MAY: I assume the  
17 two-bedroom units in which we see no plans  
18 whatsoever, they have windows in the bedrooms?

19 MR. DONAHUE: Yes, sir.

20 COMMISSIONER MAY: I can't let --

21 MR. DONAHUE: Understood.

22 COMMISSIONER MAY: -- things like

1 that go sometimes.

2 CHAIRPERSON JORDAN: I need you to  
3 identify yourself for the record.

4 MR. DONAHUE: I'm sorry, Mr.  
5 Chairman. Ed Donahue on behalf of the  
6 Applicant, Community Three.

7 CHAIRPERSON JORDAN: And you have  
8 completed the witness cards?

9 MR. DONAHUE: Yes, I have.

10 CHAIRPERSON JORDAN: You've been  
11 around this block before.

12 Anybody else have any questions  
13 for this Applicant?

14 Does OP have anything that they  
15 need from the Applicant?

16 MS. THOMAS: Nothing.

17 CHAIRPERSON JORDAN: Anything in  
18 addition you need to add?

19 MS. THOMAS: Nothing to add. We  
20 are happy they satisfied the community's  
21 request and made this a smooth case for the  
22 community.

1                   CHAIRPERSON JORDAN: The  
2 Department of Transportation is not here. I  
3 think they were invited. Right, Mr. Moy?

4                   MR. MOY: Yes, sir.

5                   CHAIRPERSON JORDAN: And they're  
6 not here.

7                   We do have a letter of support  
8 from ANC-2C. Is anyone here from ANC-2C?

9                   Any persons in the audience that  
10 want to speak in support? Those in  
11 opposition? There is none.

12                   I think we can move to  
13 deliberations unless you want to do a  
14 presentation for the Board, which you have  
15 every right to do.

16                   MR. DONAHUE: I'm happy to waive,  
17 Mr. Chairman.

18                   CHAIRPERSON JORDAN: Then we can  
19 close the hearing based upon the record and  
20 move into deliberation.

21                   Is there a feel from the Board in  
22 this matter from anyone? Anyone want to make

1 a motion or you're going to wait for me to do  
2 all the work?

3 All right. Then I would move that  
4 we grant the requested relief -- the amended  
5 relief as requested.

6 COMMISSIONER MAY: Second.

7 MEMBER MacMURRAY: Sorry. Second.

8 CHAIRPERSON JORDAN: Motion made  
9 and seconded. I think Mr. May beat you to the  
10 second.

11 Any unreadiness? All those in  
12 favor of the motion signify by say aye.

13 BOARD MEMBERS: Aye.

14 CHAIRPERSON JORDAN: Those opposed  
15 nay. The motion carries.

16 Mr. Moy.

17 MR. MOY: Yes, sir. Staff would  
18 record the vote as four to zero to one. This  
19 is on the motion of Chairman Jordan to approve  
20 the application with the amended relief.

21 Seconding the motion Mr. Peter May. Also in  
22 support of the motion Ms. MacMurray and Mr.

1 Hinkle. No other Board members participating.  
2 Again, the final vote is four to zero to one.  
3 The motion carries.

4 CHAIRPERSON JORDAN: Thank you. I  
5 believe we are prime for a summary order.

6 MR. MOY: Yes, sir.

7 CHAIRPERSON JORDAN: Thank you.

8 Is there any other business coming  
9 before this Board? Let me then before we  
10 dismiss --

11 Thank you.

12 MR. DONAHUE: Thank you, Mr.  
13 Chairman.

14 CHAIRPERSON JORDAN: In  
15 accordance with Section 405(c) of the Open  
16 Meetings Act, D.C. office code 2575, I move  
17 that the Board of Zoning Adjustment hold  
18 closed meetings on Monday, September 10th,  
19 17th, and 24th beginning at 4:00 p.m. for the  
20 purposes of obtaining legal advice from our  
21 counsel and/or to deliberate upon but not  
22 voting on cases scheduled to be publicly heard

1 or decided by the Board on the day after each  
2 closed meeting as those cases are identified  
3 by the Board's agendas for September 11th,  
4 18th, and 25th which have been of public  
5 record.

6 Is there a second?

7 MEMBER MacMURRAY: Second.

8 CHAIRPERSON JORDAN: Motion made  
9 and seconded.

10 Mr. Secretary, please take a roll  
11 call on the motion.

12 MR. MOY: Yes, sir.

13 Board members, when I call your  
14 name, if you would please respond with yes or  
15 no or aye or nay.

16 Peter May.

17 COMMISSIONER MAY: Aye.

18 MR. MOY: Chairman Jordan.

19 CHAIRPERSON JORDAN: Aye.

20 MR. MOY: Ms. MacMurray.

21 MEMBER MacMURRAY: Aye.

22 MR. MOY: Mr. Hinkle.

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MEMBER HINKLE: Yes.

MR. MOY: Ms. Sorg is not present with us this afternoon.

CHAIRPERSON JORDAN: Thank you. The motion carries. As it appears that this motion has passed, I request that the Office of Zoning provide notice of these closed meetings in accordance with the law. Thank you.

Seeing there is no other business coming before us today, then we will adjourn this hearing.

(Whereupon, at 2:43 p.m. the hearing was adjourned.)

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In the matter of: Public Hearing

Before: BZA

Date: 07-31-12

Place: Washington, DC

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