

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY  
MARCH 9, 2010

+ + + + +

The Special Public Meeting  
convened in Room 220 South, 441 4th Street,  
N.W., Washington, D.C. 20001, pursuant to  
notice at 9:30 a.m., Marc D. Loud,  
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman  
MERIDITH MOLDENHAUER, Board Member  
NICOLE SORG, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist  
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the  
minutes from the Special Public Decision  
Meeting held on March 9, 2010.

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO.null

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

9:48 a.m.

CHAIRPERSON LOUD: This meeting will please come to order. Good morning, ladies and gentlemen. This is the March 9, public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson. Joining me this morning is Meridith Moldenhauer, Mayoral Appointee; Ms. Nickie Sorg, Mayoral Appointee; Mr. Clifford Moy, Secretary of the BZA; Ms. Mary Nagelhout, our counsel from the Office of Attorney General; and on my far left Ms. Beverley Bailey, Zoning Specialist here in the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meetings unless the Board asks someone to come forward.

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

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1 reporter and is also webcast live.  
2 Accordingly, we must ask you to refrain from  
3 any disruptive noises or actions in the  
4 hearing room. Please turn off all beepers and  
5 cell phones.

6 Does the staff have any  
7 preliminary matters?

8 MR. MOY: Yes, we do, Mr.  
9 Chairman, but staff would suggest that we take  
10 that on a case-by-case basis.

11 CHAIRMAN LOUD: Very well, Mr.  
12 Moy. Then why don't we proceed with the  
13 agenda for this morning.

14 MR. MOY: Yes. Good morning, Mr.  
15 Chairman and Members of the Board. The first  
16 of the two cases for decision in the special  
17 public meeting is Application No. 18033. This  
18 is of Leon Morse and Amanda Lonsdale pursuant  
19 to 11 DCMR 3104.1.

20 This is for a special exception  
21 for a two-story rear addition to an existing  
22 one-family detached dwelling under Section

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1 223, not meeting the sideyard requirements  
2 under Section 405 in the R-1-B District at  
3 premises 2723 36th Street, N.W. This property  
4 is in Square 1933, Lot 8.

5 As the Board will recall on  
6 February 23rd, 2010 the Board completed public  
7 testimony, closed the record and scheduled its  
8 decision on March 9th. The Board requested  
9 additional information to supplement the  
10 record from the applicant. The applicant has  
11 filed. That filing is identified as Exhibit  
12 24 in your case folders.

13 The following consist of a  
14 narrative addressing the Board's concerns to  
15 water drainage (a). And (b) also in the  
16 filing are two letters from neighbors in  
17 support. The Board is to act on the merits of  
18 the special exception relief and also to act  
19 on the posting and affidavit of posting  
20 requirements pursuant to Section 3113 and  
21 there is a series of those.

22 That completes the staff's

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1 briefing, Mr. Chairman.

2 CHAIRPERSON LOUD: Thank you, Mr.  
3 Moy. I think we had a pretty firm and robust  
4 hearing on this and heard a lot of the issues  
5 and probably won't need to spend a whole lot  
6 of time on this this morning. As a  
7 preliminary matter let's take up the issue of  
8 our need to waive the requirements of Sections  
9 3113.14, 3113.15, 3113.18, 3113.19, and  
10 3113.20, all of which relate to the  
11 requirements that we have in our regs for  
12 posting the property.

13 In this case it was not posted in  
14 accordance with the rules. Subsequently there  
15 was an affidavit posting filed but it was not  
16 made timely. Under rule 3100.5 the Board has  
17 authority to waive each of those rules that I  
18 just mentioned for good cause shown where  
19 there is no prejudice to any party. In this  
20 particular case the ANC was a party.

21 The ANC voted to support this  
22 application so I don't believe they will be

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1 prejudiced by our allowing the latest filing  
2 of these posting requirements, in addition to  
3 which there are a number of ways in which the  
4 Office of Zoning makes sure that persons are  
5 notified about cases beyond just the posting  
6 and that includes sending mail notices to  
7 everyone that lives within 200 feet of the  
8 applicant's property, publication in the  
9 Register and so forth. As I've indicated,  
10 notification to the ANC which then acts as a  
11 leader in the community bringing folks to the  
12 table.

13 I do believe that good cause has  
14 been shown for waiving requirements of our  
15 rule and I would like to suggest to Board  
16 Members that by consensus we agree to waive  
17 our rule to allow the late filing and the late  
18 posting. Is there a discussion on that?  
19 Seeing none, I think by consensus we are all  
20 in agreement to waive the requirements of our  
21 rule.

22 As I indicated, it was a very

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1 straightforward case with the support of the  
2 community. We are obviously ready to  
3 deliberate and I will turn to Ms. Sorg to lead  
4 us off.

5 MEMBER SORG: Thank you, Chairman  
6 Loud. This case is for a special exception  
7 under Section 223 for a two-story addition to  
8 a single-family dwelling in the R-1-B zone at  
9 2723 36th Place N.W.

10 The project has the support of the  
11 local ANC-3C which is at our Exhibit 21 and  
12 letters of support from the adjacent neighbors  
13 which is contained within our Exhibit 24.  
14 This is a pretty straightforward 223 case and  
15 rather than be redundant and go through all of  
16 the analysis provided in the OP report and  
17 other exhibits, and OP support recommendation  
18 which is at our Exhibit 22, I would like to  
19 incorporate by reference the OP report as  
20 analysis and conclusions.

21 Also, I wanted to reference the  
22 Exhibit 24 which contains the additional

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1 information that was submitted after the  
2 hearing on February 23rd in which the  
3 applicant's architect addressed the questions  
4 in the hearing with regard to drainage and  
5 storm water runoff and did so adequately.

6 So I would like to rest on the  
7 record and voice my support for this  
8 application. With that I would like to invite  
9 my colleagues for discussion and if there is  
10 any additional thoughts or reflections.

11 CHAIRPERSON LOUD: Thank you,  
12 Board Member Sorg. That was an excellent sort  
13 of recap of where we stand with the case. It  
14 was brief enough not to be redundant, as you  
15 indicated, yet it covered the main points of  
16 the case of 223 sideyard relief with the  
17 support of the ANC, support of key neighbors.

18 I think, as you alluded to, Mr.  
19 Turnbull, who sat in on the case, who is not  
20 here with us this morning, had some issues  
21 regarding storm water drainage. Through our  
22 Exhibit 24 the applicant addressed that.

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1 I don't have anything further to  
2 add to that. I think it was a well-prepared  
3 case, well-briefed case, and I think you did  
4 a good job of taking us through the  
5 deliberation.

6 Is there anything further on this  
7 case? Okay. Is there a motion? Why don't I  
8 make a motion then that we approve Application  
9 No. 18033 for special exception relief under  
10 Section 223 for an addition to a single-family  
11 dwelling not meeting the sideyard requirements  
12 of Section 405.9 in the R-1-B.

13 MEMBER SORG: And I'll second.

14 CHAIRPERSON LOUD: Motion has been  
15 made and seconded. Is there further  
16 deliberation? Hearing none, all those in  
17 favor say aye.

18 ALL: Aye.

19 CHAIRPERSON LOUD: Is there any  
20 opposition and/or abstentions?

21 Mr. Moy, can you read it back.

22 MR. MOY: Yes, sir. With

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1 pleasure. The staff would record the vote as  
2 three to zero to one. This is on the motion  
3 of the Chair, Mr. Loud, to approve the special  
4 exception relief from Section 223 not meeting  
5 the sideyard requirements under Section 405.9.

6           Seconding the motion Ms. Sorg.  
7 Also in support of the motion Ms. Moldenhauer.  
8 We have a member not present and not voting.  
9 Finally, Mr. Chairman, we also have, as you  
10 mentioned earlier, an absentee ballot from Mr.  
11 Turnbull who also participated. His absentee  
12 vote is to approve with such conditions as the  
13 Board may impose which would give a resulting  
14 vote to four to zero to one to approve the  
15 application.

16           CHAIRPERSON LOUD: Thank you, Mr.  
17 Moy. I do believe this is a summary decision  
18 so the applicant should have the written  
19 decision in the mail in a couple of days at  
20 the latest.

21           Is there anything further in this  
22 case?

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1 MR. MOY: Not on this case, Mr.  
2 Chairman.

3 CHAIRPERSON LOUD: Thank you.

4 I want to thank you, Ms. Sorg, for  
5 taking us through the case and thank the  
6 applicants for a well-briefed case and for  
7 reaching out to the ANC and making their  
8 support a part of your package.

9 Mr. Moy, when you're ready we can  
10 call the next case.

11 MR. MOY: Yes. That would be  
12 Application No. 18037. This is of Dix Street  
13 Corridor Revitalization Partners, LLC,  
14 pursuant to 11 DCMR 3104.1 and 3103.2.

15 This is for a special exception  
16 under Subsection 353.1, and for the  
17 construction of more than one structure on one  
18 record lot under Subsection 2516.1, and for  
19 variance relief from the number of parking  
20 spaces required under Subsection 2101.1, from  
21 the size of parking spaces required under  
22 Subsection 2115.1, from the number of

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1 contiguous compact parking spaces required  
2 under Subsection 2115.4, from the parking area  
3 requirements under Subsection 2115.10, and  
4 from the building lot control requirements  
5 under Subsection 2516.4.

6 This is all to allow the  
7 renovation and construction of residential  
8 buildings for a new multi-family housing  
9 development in the R-5-A and C-2-A Districts  
10 at premises 400-414 Eastern Avenue, N.E., 405-  
11 407 Dix Street, N.E., and 61st Street, N.E.  
12 The subject lots are in Square 2560, Lots 2,  
13 17, 18, 19, 28, 800, and 806.

14 On March 2, 2010, the Board  
15 Completed public testimony, closed the record,  
16 and scheduled its decision on March 9th. The  
17 Board requested that the applicant provide  
18 additional information to supplement the  
19 record. The applicant made its filing, Mr.  
20 Chairman. It's identified as Exhibit 41 in  
21 your case folders.

22 Finally, the office is also in

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1 receipt of a filing dated March 4, 2010 from  
2 a Ms. Tammy Taylor, attorney representing  
3 Fabrizio and Company, James and Megastub. The  
4 exhibit is identified as Exhibit 40. It  
5 contains copies of the party's respective  
6 leases to treat as a preliminary matter.

7 The Board is to act on the merits  
8 of the two special exception relief for a new  
9 residential development, a variance relief  
10 from Section 2516.4, and variances from four  
11 sections attended to the parking requirements.  
12 That completes the staff's briefing, Mr.  
13 Chairman.

14 CHAIRPERSON LOUD: Thank you, Mr.  
15 Moy. Appreciate that summary of the case. I  
16 think the initial issue is the issue of one of  
17 the supplement submissions that we received  
18 after the record closed. We did close the  
19 record at the conclusion of the hearing last  
20 week except for a specific document that we  
21 requested.

22 At the beginning of every hearing

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1 I always read the following language so that  
2 the parties who are present in the hearing  
3 room will know. It goes something like this;  
4 the record will be closed at the conclusion of  
5 each case except for any material specifically  
6 requested by the Board. The Board and staff  
7 will specify at the end of the hearing exactly  
8 what is expected, the date when the persons  
9 must submit the evidence to the Office of  
10 Zoning.

11 After the record is closed no  
12 other information will be accepted by the  
13 Board and that is pursuant to one of our rules  
14 in Section 3300. I can pull the exact rules  
15 if necessary.

16 In this case I think we did  
17 receive after the closing of the record two  
18 documents. One was requested by the Board.  
19 The second one was not. I believe it was  
20 Exhibit 41.

21 Board Member Moldenhauer, was it  
22 41?

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1                   MEMBER MOLDENHAUER: 41 was the  
2 document we requested from the applicant's  
3 attorneys.

4                   CHAIRPERSON LOUD: Okay.

5                   MEMBER MOLDENHAUER: 40 was a  
6 document sent by another property owner's  
7 attorney which we did not request.

8                   CHAIRPERSON LOUD: Thank you for  
9 the clarification. So, in this regard, I am  
10 suggesting to Board Members that we not accept  
11 the document that was submitted for the record  
12 that we did not request. We had a full-blown  
13 hearing in the matter that was attended by a  
14 number of folks. A number of written  
15 submissions were made that were timely.

16                   Once that record is closed we want  
17 to stock to keeping the record closed so that  
18 we don't get into this posture of having late  
19 filings and not being able to do what we are  
20 really called here to do which is make  
21 decisions. I am opposed to allowing that  
22 information into the record.

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1 I think part of what was submitted  
2 with that is included in the other exhibit  
3 anyway and the remainder of it is information  
4 that there is no reason it could not have been  
5 brought to our attention before the record  
6 closed. With that as the preliminary matter,  
7 I don't know, Ms. Nagelhout, Mr. Moy, if we  
8 actually need to vote on that if we can by  
9 consensus.

10 By consensus then we will not  
11 allow the supplemental pleading Exhibit No. 40  
12 into our record. We will, however, allow  
13 Exhibit No. 41. I think that obviously it was  
14 a very well briefed case and we heard from all  
15 sides on the issue. We are ready to  
16 deliberate. I'm going to turn to Board Member  
17 Moldenhauer to start us off.

18 MEMBER MOLDENHAUER: Thank you,  
19 Chairman Loud.

20 I'll start off the case for us.  
21 Case 18037 is an application for new houses  
22 for families to develop in a 1.8 acre track in

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1 the Capital View area, NE boundaries of the  
2 neighborhood for the District of Columbia.

3 The project was an RFP that was  
4 presented to the District of Columbia and a  
5 grouping of additional properties around the  
6 area for developing three-bedroom and larger  
7 unit townhouse units to provide affordable  
8 housing to low and moderate-income households.

9 The project is definitely a  
10 fabulous example of IZ or, rather, maxing out  
11 IZ and providing a large number of low income  
12 household opportunities. This project will  
13 actually provide 30 percent of the projects  
14 for more than 30 percent for AMI. Four units  
15 would be four households earning up to 60  
16 percent of AMI. Then 44 will be targeting  
17 households up to 120 percent of AMI.

18 The applicant, though, testified  
19 that even though they can go up to 120 percent  
20 of AMI based on HUD that they most likely  
21 would not be marketing any of the units to  
22 that degree.

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1           The application has a long list of  
2 requests for relief that they are seeking.  
3 They are seeking multiple special exception  
4 relief and then also a grouping of area  
5 variances. The majority of the area variance  
6 relief are parking requests and focusing on  
7 the layout of parking. I will separate out  
8 the two special exceptions and the one  
9 variance and then address the parking on a  
10 separate element.

11           The 353.1 special exception relief  
12 to permit a new multi-family building and  
13 multiple family developments in the R-5-A  
14 portion of the site. This project actually is  
15 a split-zone project and it has two different  
16 zones so this would be relief for the R-5-A  
17 portion of the site to permit multi-family  
18 development.

19           Under the special exception  
20 standard I think there is sufficient evidence  
21 in our record that goes to the issue of any  
22 potential impact to building arrangements of

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1 light and air and then the additional concerns  
2 for the other elements. I think that has been  
3 fully briefed in the OP report.

4 As I start to reference the OP  
5 report for the record, it is our Exhibit No.  
6 28 but there was a typographical error with  
7 the date on the OP report actually says  
8 February 23, 2009. It actually should read  
9 February 23, 2010 for later reference.

10 I think the request for the  
11 special exception under 353.1 has been made.  
12 I think that the fact that this is a split  
13 area zone and they are simply trying to  
14 provide the same conceptual layout of the  
15 project on both portions of the site.

16 There is special exception relief  
17 for 2516.1 which would be to permit buildings,  
18 more than one building on a record lot for the  
19 entire site. This has to do with right now  
20 the theoretical lot and then providing a  
21 multiple lot, I think, for the development.

22 Section 2516.1 states that if

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1 approval of the BZA for a special exception  
2 under 3104 for two or more principal buildings  
3 or structures may be erected on a single  
4 subdivided lot subject to the provisions of  
5 the section.

6           Again, the OP report provides  
7 sufficient explanation and analysis for this  
8 walking through the theoretical lots and then  
9 the requirements under which this special  
10 exception should be granted.

11           I believe that the applicant and  
12 the architects fully briefed this and OP fully  
13 went through the different issues here.  
14 Again, I think that the overall public  
15 interest of the project is very sufficient and  
16 that they meet all the legal requirements for  
17 the special exception.

18           The next element is the area  
19 variance relief under 2516.4 which would  
20 permit greater or lesser development standards  
21 than otherwise permitted. This we have  
22 extensive charts provided for in the OP report

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1 and in the applicant's report which outlined  
2 the different standards of relief that are  
3 being requested including different relief  
4 under FAR lot occupancy, side yard relief,  
5 rear yard relief just to name a few.

6 The applicant went through and  
7 explained the need for this specific layout  
8 and under the variance requirement the  
9 uniqueness was a compliment of factors  
10 including the topography, the change in grade  
11 that the lot has, the unique size of the lot.

12 It is two separate lots that are  
13 combined and the split zone aspect of the lot  
14 in addition to the fact that this is an RFP  
15 application and that had specific requirements  
16 so the applicant was trying to conform to  
17 those obligations that they submitted in the  
18 RFP while still trying to create a balance  
19 between the zoning requirements and the  
20 development needs of the project in addition  
21 to the inclusionary zoning aspect of trying to  
22 provide a balance between additional housing

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1 and their need to satisfy side yards and lot  
2 occupancies and all of the different requests  
3 that are required.

4           Again, instead of articulating  
5 each individual element for the different  
6 aspects of the project, I will incorporate by  
7 reference the tables and charts provided in  
8 our OP report. That includes the different  
9 requirements and the different relief that is  
10 sought as in conjunction with the IZ  
11 standards. That is page 11 of our OP report  
12 and page 12.

13           The next grouping of relief would  
14 be the area variance relief required for  
15 parking and that is 2101.1, 2115.1, 2115.10,  
16 and 2115.4. These I'm lumping together again  
17 because the layout of the project and the  
18 requirement to have few than required parking  
19 spaces, having lesser length than required for  
20 compact cars and having more compact cars than  
21 are required based on the spacing requirements  
22 under 2515.4 not grouping them in five or more

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1 groups.

2 In addition to that allowing less  
3 than required of 285 square feet for each  
4 parking space. Twenty-two spaces are proposed  
5 at 164 square feet spaces and three at 128  
6 square feet spaces.

7 Again, this then goes to the  
8 variance standard. As I articulated earlier,  
9 the uniqueness of the property is a complement  
10 of factors and I won't repeat those. The  
11 practical difficulty here goes to the issue of  
12 trying to maintain the obligation of IZ  
13 obligations of the RFP and in addition to that  
14 to provide spaces that would fit on a  
15 topographically challenged and unique-shaped  
16 property.

17 Now that I've articulated all the  
18 different relief that is requested, I'm going  
19 to kind of go more into the facts and the  
20 different issues in the case. There was some  
21 support for the case. We had ANC-7C submitted  
22 a letter of support which we received from the

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1 applicant at the hearing and was referenced in  
2 the OP report from our February 18, 2010  
3 meeting.

4 This report will not receive great  
5 weight because unfortunately the fax copy that  
6 we have indicates that it's a fax of five  
7 pages but we only received four pages and we  
8 don't actually have a signature page even  
9 though it was a very well-articulated  
10 resolution and it seemed as though they were  
11 voting unanimously in support of the  
12 application. We will provide the weight that  
13 we can give it but it does not meet the great  
14 weight standard.

15 In addition to that, we received  
16 our Exhibits No. 29 and 30 which were letters  
17 of support and we had testimony from a Dori  
18 Chapman who testified that she was an active  
19 member of the church which is one of the  
20 applicant's co-developers and that she was  
21 very excited about being about to purchase an  
22 affordable home in the area.

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1                   We did have two individuals that  
2 spoke in opposition. That was Ms. James and  
3 Ms. Kimberly and they testified as to the  
4 applicant's dislocation or potential  
5 dislocation of two tenants who are referenced  
6 in the application's report as being tenants  
7 for one of the projects. They expressed their  
8 concern about that issue and that was also  
9 part of the additional supplemental  
10 information that was requested in Exhibit No.  
11 41.

12                   While this is definitely a concern  
13 of mine, I guess the lack of information that  
14 was provided in our application initially  
15 regarding the tenants, and then also the fact  
16 that there is potentially some delay for the  
17 second phase of the project because of a  
18 tenant right to purchase pursuant to the  
19 lease.

20                   Those concerns, unfortunately, do  
21 not relate -- that harm does not relate to the  
22 relief obtained here. While it is concerning,

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1 there are obviously other avenues to address  
2 those issues.

3 Another kind of additional issue  
4 that was brought up under the Exhibit No. 41  
5 which was addressing this issue is that the  
6 applicant referenced that this is going to be  
7 a phased project. On page two of Exhibit 42,  
8 the second paragraph, they say that this  
9 Section 407 and 409 61st Street is in the  
10 second phase.

11 The application was not presented  
12 in its initial application as a phased  
13 project. However, during the hearing it did  
14 come out that this would potentially be a  
15 phased project.

16 Since this is a self-certified  
17 application at this point we cannot go any  
18 further on that issue but I think that in the  
19 future it would be advised to try to submit  
20 that in advance and that way we can have the  
21 most efficient relief that may be appropriate  
22 since this would be a phased development.

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1                   Then those are letters of support  
2                   and letters of opposition that were presented.  
3                   We also have a DDOT report which is our  
4                   Exhibit No. 31. The applicant had reviewed  
5                   that in advance of the hearing and addressed  
6                   those issues.

7                   DDOT provided its support while  
8                   providing conditions of suggesting less  
9                   parking obviously noting the fact that the  
10                  development is close to both Metro and  
11                  buslines which Mr. Turner also testified to  
12                  during the hearing.

13                  DDOT approved the site specific  
14                  TMP that would assist new residents with  
15                  transportation choices. The applicant  
16                  referenced that they would be willing to work  
17                  with DDOT on that but in my final analysis I  
18                  don't believe that is actually is a  
19                  requirement that we should condition the  
20                  application on.

21                  Then a safe means for trash  
22                  removal vehicles to access the site. This is

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1 a point that is also mirrored in OP's  
2 condition. I think I'll get to that when I  
3 talk about the final condition and the issue  
4 of the trash location.

5 Then talking about OP's  
6 conditions, OP had two conditions in their  
7 report. One was the trash enclosure which  
8 I'll get to in a moment, and the other one was  
9 the durability of the proposed vinyl siding.

10 That was addressed at the hearing  
11 by presentation of Exhibit No. 32 which is the  
12 applicant's vinyl siding lifetime limited  
13 warranty. Based on that submission OP then  
14 revised the statement that they would be  
15 satisfied with that vinyl siding or that the  
16 applicant had identified with the warranty.

17 That is my analysis of the case so  
18 I will open it up to additional -- based on my  
19 analysis I think that we should approve the  
20 relief that is being sought here and I'll open  
21 it up to additional discussions before  
22 presenting a motion.

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1                   CHAIRPERSON LOUD: Thank you,  
2 Board Member Moldenhauer. That was an  
3 excellent walk-through a case that was fairly  
4 complicated and had a number of different  
5 layers to it and you did an excellent job of  
6 simplifying all of those layers and adding  
7 them to each other.

8                   I just want to add a few thoughts  
9 on a couple things. I think some of these it  
10 sounds like you're going to get to anyway so  
11 I'll just mention them in passing. One of the  
12 issues that OP raised was the issue of vinyl  
13 siding and earlier on they had not objected to  
14 the application so much as wanted to see the  
15 applicant modify the vinyl siding that had  
16 been proposed for the project because in the  
17 out years they would have maintenance cost  
18 that would undermine the whole idea of it  
19 being affordable.

20                   The applicant did at the hearing  
21 submit some information. I don't think we  
22 ever got an exhibit number for it but we

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1 probably need to get an exhibit number for it.  
2 We did get an Exhibit No. 32. I stand  
3 corrected.

4 This is CertainTeed Vinyl Siding  
5 with a lifetime limited warranty. I think  
6 it's important to put that on the record that  
7 the applicant agreed to modify its proposal to  
8 incorporate that into each of the units that  
9 we are talking about.

10 Secondly, I think you mentioned  
11 most of the community support. I see a couple  
12 here that I just want to go on the record and  
13 mention as well. We received a letter from  
14 the Washington Interfaith Network, I think, at  
15 the hearing and my copy does not have an  
16 exhibit number but I think it goes to that  
17 third prong as to whether or not there is  
18 public good -- I'm sorry, as to whether or not  
19 there is substantial detriment to the public  
20 good were we to grant this relief.

21 You mentioned the ANC and its  
22 report. There was also a letter in the record

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1 from Deputy Mayor Valerie Santos, the District  
2 Government, and a letter in the record from a  
3 Council Member Yvette Alexander who is the  
4 council member for Ward 7.

5 That was our Exhibit 29. Again,  
6 all of that goes to whether or not, at least  
7 in the perspective of those who joined in the  
8 discussion verbally or in writing there would  
9 not be substantial detriment to the public  
10 good.

11 With respect to the trash dumpster  
12 I'm going to hold off on that because I think  
13 it sounds like you are going to come back to  
14 that in terms of a condition and, if not, I'll  
15 take it up when we get back to the discussion  
16 around conditions.

17 On the parking-related variances,  
18 you noted this and I just want to note it for  
19 my perspective for the record, that the phase  
20 one variance request was for 10 parking spaces  
21 because even though the applicant is providing  
22 a total of 57 of the required 60 spaces.

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1                   Apparently seven of these spaces  
2                   are not going to be provided until phase two  
3                   so rather than sort of coupling this request  
4                   with offsite request they decided to move  
5                   forward with a variance request. I think it  
6                   made sense and I support that and just wanted  
7                   to note that for the record.

8                   You walked through the variance  
9                   analysis and there is nothing really that I  
10                  would add to that except there is one area of  
11                  the variance analysis that to a certain extent  
12                  kind of overlapped some of the special  
13                  exception relief.

14                  It's contained in 2516.6(b) which  
15                  says, and I'm paraphrasing the language, but  
16                  it could be looked up by anyone, that every  
17                  means of ingress or egress with vehicles onto  
18                  the site must measure up to 25 feet. I think  
19                  that's a requirement in 2516.6(b) for the  
20                  special exception.

21                  However, two subsections later it  
22                  says that, "The Board can weigh that

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1 requirement -- that's 2516.6(d) -- if there is  
2 no adverse impact to the present character or  
3 future development of the site." Again, that  
4 would be waived through the continued walk-  
5 through of a special exception.

6 I think in this case the applicant  
7 demonstrated largely through the testimony of  
8 the Office of Planning that in terms of future  
9 development and character that this project  
10 was very much in fitting with the zone plan  
11 for that area of multi-family housing,  
12 affordable housing, and so on and so forth.  
13 I think they meet the requirement that would  
14 allow us to weigh the provision mandating 25-  
15 foot wide means of egress and ingress.

16 I don't believe I have any  
17 additional comments. I'm very much in support  
18 of the application. I think they met the  
19 variance test for all of the parking relief,  
20 all of the area relief that you mentioned.  
21 Specifically some of this area relief if we  
22 were to sit here and just recount, you know,

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1 lot one, building one doesn't have side yard  
2 of six feet we'd be here for two or three  
3 hours.

4 All of that is contained in two  
5 tables and both tables are in the OP report  
6 and some of the tables are also in the  
7 submissions by the applicant. Just for the  
8 sake of objectivity I'm going to reference the  
9 tables in OP's report.

10 Table 1, page 4 of OP's report,  
11 Exhibit 28, and Table 2, page 11 of OP's  
12 report, Exhibit 28 walks through, again, the  
13 various area requirements for the theoretical  
14 lots and where there is a divergence from the  
15 requirement. I support that wholeheartedly.  
16 I support your recommendation that we support  
17 this application and I will open it up further  
18 for you or for Ms. Sorg to add.

19 MEMBER SORG: I just have one  
20 comment at the beginning of your comments  
21 about the vinyl siding. I think it's my  
22 impression that the applicant didn't modify

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1 the proposal that they had originally  
2 submitted but actually just submitted with the  
3 request of OP the warranty information for the  
4 product that they had originally specified  
5 which doesn't really make a difference but,  
6 you know, that there wasn't any change.

7 I also wanted to say, I guess,  
8 that I agree with Ms. Moldenhauer's analysis  
9 in support of the application and would echo  
10 that while -- again I agree with Ms.  
11 Moldenhauer that it doesn't have any bearing  
12 specific to the relief that's requested.  
13 There did seem to be some sort of fuzzy areas  
14 in the application but I don't, again, think  
15 that is going to change my opinion on the  
16 support of the application.

17 MEMBER SORG: Now prior to  
18 providing a motion the one condition that I  
19 would recommend would be to provide  
20 flexibility to the applicant to locate the  
21 trash enclosure and screening requirements for  
22 the trash enclosure as mutually agreed by OP

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1 and DDOT.

2 The reason for that would be there  
3 was discussion, one, as to OP's concern about  
4 where the trash enclosure would be located,  
5 how it would be screened. DDOT had some  
6 concerns about the accessibility for trash  
7 pickup and dropoff, or trash pickup rather,  
8 and for the residents to drop off their trash  
9 so I would support a condition in that regard.

10 CHAIRPERSON LOUD: Just for  
11 clarity sake, for me at least anyway, the sort  
12 of suggested language of the condition would  
13 be along the lines of what?

14 MEMBER SORG: To provide  
15 flexibility to the applicant to determine the  
16 location of the trash enclosure and required  
17 screening as mutually agreed to by OP and  
18 DDOT.

19 CHAIRPERSON LOUD: That's the  
20 language I was looking for. The requirement  
21 for the screening that wherever it's located  
22 we make it clear to the applicant. We mandate

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1 that they be appropriately screened with  
2 landscaping so that it's not just a big ugly  
3 dumpster somewhere in the middle of this  
4 wonderful new development. I would be very  
5 supportive of that.

6 Is there further discussion or is  
7 there a motion?

8 MEMBER MOLDENHAUER: There is a  
9 motion. I submit a motion for Application  
10 18037 for Eastern Avenue at Dix Street, S.E.  
11 to approve the relief sought which is, and I  
12 will just list them, special exception relief  
13 under 353.1, our special exception relief  
14 under 2516.1, area variance relief under  
15 2516.4, 2101.1, 2115.1, 2115.10, and 2115.4  
16 conditioned on providing flexibility to the  
17 applicant to locate a trash enclosure and  
18 adequate screening as mutually agreed to by OP  
19 and DDOT.

20 CHAIRPERSON LOUD: Thank you. Is  
21 there a second?

22 MEMBER SORG: I'll second.

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1                   CHAIRPERSON LOUD: Motion has been  
2 made and seconded. Further discussion. Let  
3 me just throw out one quick thing, commentary.  
4 I don't think it goes in the direction of the  
5 outcome and Ms. Sorg mentioned this.

6                   I think in reviewing the record  
7 there was a certain impression that I took  
8 away that the properties were abandoned and  
9 that the applicant was coming to us with a  
10 series of abandoned properties that were being  
11 redeveloped and it was only at the hearing  
12 that I learned and fully appreciated that  
13 there were two tenancies on the property.

14                   It was in one of the submissions  
15 of the applicant. I think maybe it was  
16 Exhibit 8 or we marked it Exhibit 8 and it was  
17 a list of two tenancies. It wasn't really  
18 made clear and there were a number of points  
19 in the record where the words "abandoned  
20 property" was specifically used. I want to  
21 encourage greater attention to detail on  
22 issues like that because it could have created

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1 the wrong impression.

2 I think the issue of the tenant  
3 that did appear at the hearing and then the  
4 subsequent submission of the lease that showed  
5 an option to purchase in, I think, paragraph  
6 19 of that lease is an issue will need to be  
7 worked out between the applicant and between  
8 that tenant but I don't think it's a BZA  
9 issue.

10 The parties had appeared before us  
11 submitted into our record an exhibit that  
12 indicated that the two phases reflected two  
13 different ownerships. The first phase is land  
14 owned by the city government. Second phase is  
15 land owned by the Fabrizio entity. With  
16 respect to both of those land ownerships there  
17 is a letter in our record that says that the  
18 applicant has the authority of both of those  
19 parties to move forward.

20 In fact, I think the Santos letter  
21 gives the applicant specific authority to move  
22 forward consenting to include those lots that

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1 are owned by the city. For our purposes I  
2 think that establishes the authority of the  
3 applicant to move forward.

4 The issue of the option, as I  
5 said, is something that I think the applicant  
6 and the option purchaser will have to work out  
7 and the option purchaser seems to have an  
8 attorney now representing its interest. In  
9 the appropriate forum hopefully that will get  
10 hashed out.

11 MEMBER MOLDENHAUER: I agree with  
12 you, Chairman Loud. For reference our Exhibit  
13 No. 1 which then has multiple exhibits to that  
14 which were then identified as our Exhibit No.  
15 4 which is one of the initial submissions does  
16 describe the property as being a one-story  
17 commercial building and contains a vacant lot.  
18 Then it says the majority of the site is  
19 unutilized and abandoned.

20 I think I also have in my notes  
21 from the hearing that there were references to  
22 a vacant location. Then just to provide full

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1 disclosure they do have our Exhibit No. 9,  
2 their tab 6, does include the list of tenants.  
3 As you say, there was not an element of  
4 transparency.

5 That would have been a little bit  
6 nicer. They identified the tenants by name  
7 but they don't provide the detail which then  
8 did come out at the hearing but, again, I  
9 don't think that is a final factor as to how  
10 we apply the special exception of the variance  
11 relief.

12 CHAIRPERSON LOUD: I agree with  
13 you so word to the wise; we actually do read  
14 all this stuff, every page. We listen  
15 carefully to the testimony and so, again, it's  
16 just helpful to know at the outset what we are  
17 dealing with so it doesn't prolong it on the  
18 backend.

19 I think the other thing related to  
20 the condition is that the applicant wanted  
21 flexibility to modify the site plan, not just  
22 for the dumpster but for utilities and I guess

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1 location of utilities.

2 What I would suggest perhaps we do  
3 to approach that is that any diminimus changes  
4 to the site plan directly related to utilities  
5 I think we should give the applicant  
6 flexibility to do. But if it's going to  
7 require more than a diminimus change in the  
8 site plan, then we have a full, I think it's  
9 3126.

10 Don't quote me on it but we  
11 certainly have a rule that allows the  
12 applicant to come back to us for minor  
13 modification. If it's truly a matter of  
14 modification, they ought to come back to us  
15 but if it's just totally diminimus and  
16 locating utilities, etc., then we ought to  
17 give them that flexibility.

18 Is there further discussion? All  
19 right. The motion has been made and seconded.  
20 Hearing no further discussion, all those in  
21 favor say aye.

22 ALL: Aye.

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1 CHAIRPERSON LOUD: If there is  
2 opposition or abstention. I see Ms. Nagelhout  
3 getting ready to make some remarks.

4 MS. NAGELHOUT: Was the motion  
5 amended to include a second condition? So  
6 that's what you're voting on? Is it a motion  
7 to approve subject to the two conditions?

8 CHAIRPERSON LOUD: Yes. I was  
9 sort of reading it as one long-winded kind of  
10 condition but it can be considered two  
11 conditions. I think the idea is the dumpster  
12 should be appropriately screened like Mrs.  
13 Moldenhauer said but also some flexibility  
14 regarding minor modifications of the site plan  
15 for utility location.

16 MS. NAGELHOUT: Okay. So it's  
17 either one condition with two clauses or two  
18 conditions but it was modified.

19 CHAIRPERSON LOUD: Yes.

20 MS. NAGELHOUT: Okay.

21 MEMBER MOLDENHAUER: Just for  
22 clarification, I think the flexibility for the

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1 utility changes would actually be a separate  
2 condition because my first condition required  
3 the applicant to work with OP and DDOT because  
4 OP had some concerns and then DDOT had their  
5 own concerns and that really would not affect  
6 any flexibility in regards to utility  
7 locations so I would recommend two separate  
8 conditions.

9 CHAIRPERSON LOUD: Thank you. I'm  
10 on board with that. I believe we had called  
11 for all the aye votes and now we are looking  
12 for any absentees. I'm not certain who was on  
13 this case to submit an absentee, Mr. Moore.  
14 Are there any absentees or abstentions?

15 MR. MOY: No, sir. We do have an  
16 absentee ballot vote.

17 CHAIRPERSON LOUD: Okay.

18 MR. MOY: Okay.

19 CHAIRPERSON LOUD: Do you want to  
20 read it back?

21 MR. MOY: Well, before I give a  
22 final vote then, if this is where we're at,

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1 the absentee vote is from the other  
2 participant on the application which is Mr.  
3 Konrad Schlater and his absentee vote is to  
4 approve with such conditions as the Board may  
5 impose.

6 That would give a final vote of  
7 four to zero to one. This is on the motion of  
8 Ms. Moldenhauer to approve with two conditions  
9 as she has articulated. Seconded by Ms. Sorg.  
10 Also in support of the motion the Chairman Mr.  
11 Loud. Again, the final vote four to zero to  
12 one to approve.

13 CHAIRPERSON LOUD: Thank you, Mr.  
14 Moy. I don't believe there is any opposition  
15 to this application.

16 MR. MOY: That's correct.

17 CHAIRPERSON LOUD: So this could  
18 be a summary decision.

19 MR. MOY: Yes, sir.

20 CHAIRPERSON LOUD: Meaning the  
21 applicant would get it in a few days. I want  
22 to commend the applicant for the outreach to

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1 the community. At the end of the day it  
2 really helped to make a difference. I also  
3 want to commend the ANC for its effort to get  
4 the report in.

5 Through a glitch it did not make  
6 it officially this time and commend the  
7 witnesses that showed up at the hearing and  
8 put their concerns on the record. I hope in  
9 the follow-up some of those non-BZA issues are  
10 addressed appropriately. Is there anything  
11 further on this case?

12 MR. MOY: Not on this case, sir.

13 CHAIRPERSON LOUD: There is one  
14 further matter for the decision meeting.  
15 Correct?

16 MR. MOY: Yes.

17 CHAIRPERSON LOUD: Okay.

18 MR. MOY: Before the Chair  
19 adjourns the special public meeting, I would  
20 like to very quickly go over the secretary's  
21 report which very quickly for the record that  
22 at the Board's meeting on February 23, 2010,

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1 the Board granted a consent motion on  
2 Application No. 18040 of Royale which was to  
3 grant the rescheduling of an advertised public  
4 hearing from March 9, 2010 to April 20, 2010.  
5 That completes the report of the Secretary.

6 CHAIRPERSON LOUD: Thank you, Mr.  
7 Secretary. With that I think we'll adjourn  
8 the decision meeting, the public meeting.  
9 We'll come back. I've got to get my files for  
10 the hearing cases so we'll come back in about  
11 two minutes and convene the hearings for this  
12 morning.

13 (Whereupon, at 10:36 a.m. the  
14 special public decision meeting was  
15 adjourned.)

16  
17  
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19  
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