

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC DECISION MEETING

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TUESDAY,
JANUARY 12, 2010

The Public Decision 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, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD Chairman
SHANE L. DETTMAN Vice Chair (NCPC)
MERIDITH MOLDENHAUER Board Member

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Public Decision Meeting held on January 12, 2010.

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

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

2 9:52 a.m.

3 CHAIRMAN LOUD: This meeting will,
4 please, come to order.

5 Good morning. This is the January
6 12, 2010 Public Meeting of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Marc Loud, Chairperson. Joining me
9 today are Vice Chair, Shane Dettman,
10 representing the National Capital Planning
11 Commission, Meridith Moldenhauer and to her
12 left Clifford Moy, Secretary of BZA, Ms.
13 Sherry Glazer, Office of the Attorney General,
14 and on the far end with the new look for a new
15 year, Ms. Beverley Bailey, Zoning Specialist
16 in the Office of Zoning.

17 Copies of today's meeting agenda
18 are available to you and are located to my
19 left in the wall bin near the door.

20 We do not take any public testimony
21 at our meetings, unless the Board asks someone
22 to come forward.

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1 Please, be advised that this
2 proceeding is being recorded by a Court
3 Reporter and is also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises or actions in the
6 hearing room.

7 Please, turn off all beepers and
8 cell phones.

9 I just wanted to, before we
10 formally start, thank Mr. Shane Dettman for
11 serving as Chair in my absence. I wanted to
12 thank all the Members of the Board and the
13 staff for the superb work that you do every
14 Tuesday on behalf of our citizens.

15 Does the staff have any preliminary
16 matters?

17 MR. MOY: No, sir. Good morning,
18 Mr. Chairman, except to welcome you back to
19 the Board.

20 CHAIRMAN LOUD: Thank you, sir.
21 All right. If not, then we can proceed with
22 this morning's agenda and call our two

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1 decision cases.

2 MR. MOY: Yes, sir. That would be
3 Application No. 18009 of Samia El-Baroudy,
4 pursuant to 11 DCMR 3104.1. Well, let me add
5 at this point that at the last hearing, this
6 application was amended from variance relief
7 to a special exception 223 relief, as well as
8 withdrawing variance relief from the rear yard
9 requirements under section 404.

10 So that would give the
11 advertisement to pursuant to 11 DCMR 3104.1,
12 for a special exception to allow an addition
13 to an existing one-family row dwelling under
14 section 223, not meeting the lot occupancy
15 requirements under section 403, and
16 nonconforming structure requirements under
17 subsection 2001.3, in the R-3 District at
18 premises 3302 Prospect Street, N.W., Square
19 1205, Lot 822.

20 As the Board will recall, on
21 December 15, 2009, the Board completed public
22 testimony and closed the record and scheduled

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1 its decision on January 12th in the year 2010.

2 The Board requested no additional
3 information. So at this point, the Board is
4 to act on the merits of the request for the
5 special exception relief. And that would
6 complete staff's briefing, Mr. Chairman.

7 CHAIRMAN LOUD: Thank you, Mr. Moy.

8 I do believe we are prepared to decide these
9 cases this morning. In addition to Mr.
10 Dettman, Ms. Moldenhauer and Chairman Hood, I
11 have read the -- I was not hear for the actual
12 hearing, but I have read the transcript and
13 the pleadings and I am prepared to join with
14 them in deliberation this morning and
15 ultimately a vote.

16 So why don't we go ahead and start
17 with the 18009. I do believe Mr. Dettman is
18 going to lead us off.

19 VICE CHAIRMAN DETTMAN: Thank you,
20 Mr. Chair. And just to echo Mr. Moy's
21 comment, welcome back. I'm very happy to have
22 you back.

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1 This is an Application 18009, it's
2 a request to construct an addition to an
3 existing single-family row dwelling in the
4 Georgetown neighborhood at 3302 Prospect.

5 The request comes to us under
6 section 223 to allow a lot occupancy of 69.8
7 percent, in this Zoning District under 223, a
8 maximum lot occupancy of 70 percent is
9 allowed, as well as to allow this additional
10 development on an existing nonconforming lot,
11 that being 18 foot wide where 20 foot is
12 required and the lot area of 1,368 square feet
13 where 2,000 is required.

14 At the hearing, the Board did
15 entertain the request of a Mr. Michael Haar.
16 His application for party status is our
17 Exhibit No. 26. And after hearing some
18 testimony from Mr. Haar with respect to his
19 qualifications for party status, the Board
20 granted Mr. Haar party status.

21 We have in our record the Office of
22 Planning's report, which is our Exhibit 29,

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1 and the Office of Planning is recommending
2 approval of the application. And weighing
3 through the evidence that's in the record as
4 well as through the transcript from the
5 hearing, I'm inclined to agree with the Office
6 of Planning with their analysis.

7 I think that the proposed addition,
8 which I believe is a 6 foot by 18 foot rear
9 addition to this house, it's going to extend
10 into the rear yard. I think that with respect
11 to the impacts that this addition will have on
12 neighboring properties with respect to light,
13 air, privacy, enjoyment of use and especially
14 with respect to Mr. Haar's property, I don't
15 see those impacts rising to a level of being
16 considered to be substantial or undue.

17 I do agree with the Office of
18 Planning report in that they say it will have
19 some impact, but, again, it does not rise to
20 such a level.

21 With respect to light and air, the
22 Office of Planning does concede that perhaps

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1 the addition will cast some additional shadows
2 during the morning on the inner portions of
3 the enclosed porch at the rear of the property
4 at 3304 Prospect, which is Mr. Haar's
5 property, and that it might extend the period
6 when the morning sun would not reach the
7 second floor windows of that property.

8 And then they go on to say that on
9 the other hand the enclosed porch extends
10 slightly beyond the proposed addition and that
11 all of the potentially impacted windows are
12 south facing and that the evidence does not
13 suggest that there would be any undue impact
14 to light and air.

15 With respect to privacy of use and
16 enjoyment, there are no windows proposed for
17 either the east or west side of this addition.

18 They are all rear facing. And to the rear is
19 an existing single-family home that actually
20 fronts on 33rd Street and we did not receive
21 any kind of testimony or letter in the record
22 from that property owner indicating that they

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1 would have a problem with respect to privacy
2 and enjoyment of use.

3 We did have a rendering included in
4 the Office of Planning report, which I thought
5 provided a nice comparison between what
6 currently exists in terms of the view from 33rd
7 Street and what is being proposed. And just
8 looking at that, I don't see this having an
9 undue impact on the character, the scale and
10 the pattern of what currently exists in this
11 neighborhood, especially with respect to the
12 materials that are going to be used to finish
13 this addition, those will be reviewed by HPRB
14 and they will be looking at making sure that
15 this addition fits in with the surrounding
16 character of the Georgetown neighborhood.

17 So that being said, Mr. Chairman, I
18 can turn it back to you for additional
19 comments.

20 CHAIRMAN LOUD: Well, thank you,
21 Mr. Dettman. I think that was a very thorough
22 analysis of OP's report and sort of the facts

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1 before us.

2 As I indicated, I was not hear for
3 the hearing, but I did read the transcript and
4 I'm in agreement with the OP recommendation as
5 well as how you laid out the case. So why
6 don't I open it up and see if Mrs. Moldenhauer
7 has some feedback.

8 MEMBER MOLDENHAUER: Thank you, Mr.
9 Chair. Thank you, Mr. Dettman for the
10 summary. I do not agree with your final
11 analysis and I'll just state my reasons.

12 I think that Mr. Haar, the
13 opponent, did make a substantial argument for
14 impact on light, air, privacy and enjoyment of
15 use. The sundeck that he currently has, I
16 think, would be substantially impacted. There
17 is only going to be about a 3 foot addition
18 that will now -- a 3 foot portion of that
19 sundeck that will actually extend beyond a
20 solid brick two-story addition that the
21 applicant is requesting.

22 And I think that that will

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1 definitely substantially and unduly impact the
2 use of that space. It's a screened porch,
3 which has, you know, been in existence for
4 many years prior to the zoning ordinance,
5 prior to Mr. Haar's purchasing of the
6 property, from I believe the original owners.

7 And so I think that that is going
8 to -- they did show additional pictures.
9 There is diagrams in the record. There is
10 pictures of the sun shadows that are going to
11 currently exist with no addition. And then
12 there was testimony by both Mr. Haar and the
13 applicant that they had not done a sun study,
14 that, you know, there would be an impact.

15 And I then just -- it's my analysis
16 that that would be substantial versus OP's
17 analysis that that would not be.

18 I also think that in reviewing the
19 testimony and reviewing the file, including
20 the pictures and renderings in the OP report,
21 I have come to the conclusion that this would
22 affect the character, scale and pattern of the

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1 neighborhood.

2 There was testimony and in the
3 diagrams it shows that the houses on Prospect
4 have a graduated pattern where the first house
5 that fronts onto or sides onto 33rd Street has
6 no addition. The second property, which is
7 the applicant's property, has a patio. And
8 then the third property has the sundeck. The
9 fourth property then is setback much further
10 from Prospect and thus its actual rear extends
11 back into the yard and then that continues on
12 down into the center of the block.

13 I think that that creates a pattern
14 of a graduated increase in the rear additions
15 of the property. And to allow not just one-
16 story, but a two-story solid brick addition, I
17 do think would go against that character,
18 scale and pattern.

19 Mr. Dettman did testify that the
20 structure would be brick and, as OP stated,
21 would go along with the character of the area.

22 However, I don't think that with this

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1 specific block, the vantage point from 33rd
2 Street, that that would follow that aspect.

3 I think Mr. Dettman pointed out,
4 that in some of his notes and not in my notes,
5 but, that Mr. Haar, the opponent, did state
6 that he felt that this would disrupt the
7 pattern of the houses that are on the block
8 that have been in existence for a while. And
9 obviously that pattern was created when these
10 houses were initially built.

11 And so for those reasons, I don't
12 feel that the applicant satisfies 223.

13 VICE CHAIRMAN DETTMAN: Thank you,
14 Mr. Chair. I just wanted to -- I neglected to
15 mention that the ANC did weigh in on this
16 application, that's our Exhibit No. 27. They
17 are in opposition to the addition, noting that
18 the property is already 8 square feet beyond
19 zoning requirements and that the ANC does not
20 want to see any further building in that area.

21 And they also note that the
22 addition will have a negative impact on the

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1 adjoining property's light, air and view. I
2 won't go any further into the light, air and
3 view with respect to what my views are in
4 terms of the impact to those three items.

5 And the other issue that the ANC
6 raised is that the property is already 8
7 square feet beyond zoning requirements and
8 they don't want to see any additional building
9 area, but that's just the reason why it is
10 before us. It's actually beyond the lot
11 occupancy and under 223 they are allowed to
12 come to us for a special exception.

13 So I think that that probably
14 addresses the two issues that were raised in
15 the ANC resolution.

16 And finally, we did receive one
17 letter, Exhibit No. 25, from a Jeremiah de
18 Michaelis, who resides at 1217 33rd Street,
19 N.W., that's actually the east side of 33rd
20 Street. This person is not a party to the
21 case. However, they do raise the issue that
22 it will diminish the open air space between

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1 properties and it will block sunlight into the
2 rear garden of their property.

3 And based on just simply the
4 location of the subject property, I don't see
5 how this will have any impact to sunlight to
6 this person's property. And so again, not a
7 party to this case, but wanted to make sure
8 that we get that in the record that we did
9 have the letter and that we considered it in
10 our deliberation.

11 MEMBER MOLDENHAUER: And just to
12 jump in, I think that both of those letters do
13 support my position. One, you know, that the
14 ANC also is stating that there would be an
15 effect on the light, air and use of adjoining
16 properties. And two, the other -- the second
17 letter that you referenced also, I think,
18 addresses -- maybe I'm glossing over the
19 point, but does, I think, address and we can
20 analyze it from there that this would change
21 the character, scale and pattern on that block
22 and thus have an effect on that property

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1 owner.

2 CHAIRMAN LOUD: I just wanted to
3 weigh in and add my two cents before I think
4 we are ready to call it for a vote shortly.
5 We can go and do another set of rounds if you
6 guys would like.

7 But just in terms of the whole
8 light impact, I agree that there are some
9 impacts based on the evidence that's in the
10 record. I just don't think that it rises to
11 the level of a section 223 substantially
12 adversely impacting the Mr. Haar party.

13 I think in the record at page 73 of
14 the transcript, Mr. Haar is sort of voir dired
15 by Chairman Hood regarding the whole light
16 issue and his response is that I don't know,
17 I'm not a light expert and I don't know what a
18 light expert would say in terms of what
19 percentage of time light would be blocked
20 versus how many hours a day we would have
21 unrestricted light.

22 There is also in our record the

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1 opinion of the Office of Planning that while
2 there might be some light impacts, it wouldn't
3 rise to the level of being substantial.

4 So there is a conflict in the
5 record from which as Board Members we would be
6 free to, you know, select the evidence we find
7 most persuasive. For me, I understand my
8 colleagues' points about light and air. But
9 again, it just didn't rise to the level of
10 being substantial enough for me to support Mr.
11 Haar's concerns.

12 On the issue of the substantial
13 visual intrusion upon the character, scale and
14 pattern, my interpretation of that provision
15 is, first of all, that it would have to be a
16 substantial intrusion and not just an
17 intrusion. But there would have to be
18 something about it that would make it
19 significant or substantial.

20 In this case, it would also, not
21 just in this case, but I think in every case
22 and this is my look at 223, it would have to

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1 be all three of those things. It would have
2 to be a substantial intrusion upon the
3 character, substantial intrusion upon the
4 scale, substantial intrusion upon the pattern.

5 And again, I'm looking at those as
6 three independent requirements and then
7 language says and, it doesn't say or, so it
8 doesn't, for example, say substantial
9 intrusion upon the character, scale or
10 pattern, but all three things.

11 And so I agree with my colleague
12 that in terms of there being some concerns
13 about the pattern, I can arguably accept and
14 support that argument. I don't think it's
15 substantial, but I think she has made a really
16 strong -- she has laid out a really strong
17 argument that it disrupts the pattern.

18 I don't think it disrupts the scale
19 though and I don't think that it substantially
20 intrudes upon the character. I think the
21 materials are going to be the same. It's not
22 this huge out of proportion addition that just

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1 stands out like a sore thumb on the block.

2 So those are some of the reasons
3 why I have decided to support the application.

4 And with that, do we want to go around again
5 and weigh in or are we ready to call a vote?

6 VICE CHAIRMAN DETTMAN: Mr.
7 Chairman, I'm prepared to go forward with a
8 vote. I just wanted to ask one question of my
9 colleagues. During the hearing I had inquired
10 of the applicant of whether or not they intend
11 to have a deck, because their plans show a
12 sliding glass door. And the response was that
13 it is something that the applicant would
14 certainly, you know, enjoy, but it wasn't
15 really fully fleshed out between the architect
16 and the applicant.

17 And I had said that well, you know,
18 because if you were to propose a deck, because
19 of its height, it would need additional relief
20 which wasn't before us.

21 I guess my question is based on our
22 observation on the proposed plans, do you see

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1 it necessary to have something in the order,
2 this is going to be a full order, because we
3 have a party in opposition, to make that
4 observation for the sake of DCRA, for the sake
5 of the applicant that if a deck is
6 contemplated in the future, additional relief
7 will be necessary?

8 It might be a little too cautious,
9 too.

10 CHAIRMAN LOUD: I don't necessarily
11 see it as necessary, because, (A), I don't
12 think it was before us, you know, for us to
13 deliberate on. And I think even in the
14 exchange that happened on the transcript, the
15 applicant was aware that they would need some
16 additional relief.

17 And certainly, one could go back to
18 the transcript, to that section of the
19 transcript, and I'm not saying that the Zoning
20 Administrator would, but have a really strong
21 basis for suggesting that there would be bad
22 faith if they attempted to move forward on

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1 that and sort of sneak, you know, back door
2 that in. But those are just my thoughts.

3 MEMBER MOLDENHAUER: I'm obviously
4 not in support of the application, but I think
5 in just addressing the issue of, you know, if
6 the application does go through, what would --
7 would there be a need for having a reference
8 to that deck?

9 And I agree with Chairman Loud. I
10 don't think that it would be necessary. I
11 think that the applicant had worked with the
12 architect. They realized they couldn't add a
13 deck, because that would push them over the 70
14 percent under 223. And so I think that also
15 any of these additional comments are on the
16 record and if there ever was an issue, you
17 know, that would be sufficient.

18 VICE CHAIRMAN DETTMAN: Thank you.

19 So if there is nothing further, I'm prepared
20 to make a motion.

21 CHAIRMAN LOUD: Yes.

22 VICE CHAIRMAN DETTMAN: I'll move

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1 for approval of Application No. 18009,
2 pursuant to 11 DCMR 3104.1, for a special
3 exception to allow an addition to an existing
4 one-family row dwelling under section 223, not
5 meeting the lot occupancy requirements of
6 section 403, and the nonconforming structure
7 requirements of subsection 2001.3, in the R-3
8 District at premises 3302 Prospect Street,
9 N.W.

10 CHAIRMAN LOUD: Seconded. The
11 motion has been made and seconded. Is there
12 further deliberation?

13 Hearing none, all those in favor
14 say aye.

15 VICE CHAIRMAN DETTMAN: Aye.

16 CHAIRMAN LOUD: Aye. All those who
17 oppose?

18 MEMBER MOLDENHAUER: Nay.

19 CHAIRMAN LOUD: And are there any
20 abstentions or other votes? Absentee, I
21 should say.

22 MR. MOY: Yes, Mr. Chairman. We do

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1 have another participant on the application
2 and that is Chairman Anthony Hood from the
3 Zoning Commission. And his absentee ballot is
4 to approve with such conditions as the Board
5 may impose.

6 So that would give a resulting vote
7 of 3-1-1, three in the -- on the motion of Mr.
8 Dettman, the Vice Chair, to approve the
9 application, seconded by Mr. Loud. Also in
10 support of the application by absentee ballot
11 Mr. Hood. Ms. Moldenhauer opposed and no
12 other Board Member participating.

13 So again, it's 3-1-1.

14 CHAIRMAN LOUD: Thank you, Mr. Moy.

15 I don't believe there is anything further on
16 this case, so let me thank Mr. Dettman for
17 taking us through the case, thank Mrs.
18 Moldenhauer for making some very excellent
19 points and also thank the applicants for your
20 patience.

21 With respect to the decision, it
22 won't be a summary decision, because there was

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1 opposition from the ANC. And I do believe
2 that we are ready to call the next case.

3 MR. MOY: Yes, sir. The next and
4 final case for decision is Application No.
5 18010 of Ashley B. Poole, pursuant to 11 DCMR
6 3103.2, for a variance from the rear yard
7 requirements under section 404, a variance
8 from the court requirements under section 406,
9 and a variance from the nonconforming
10 structure provisions under subsection 2001.3,
11 to allow a second-story addition to an
12 existing one-family row dwelling in the R-4
13 District. This is at premises 1212 Wylie
14 Street, N.E., Square 1003, Lot 87.

15 On December 15, 2009, the Board
16 completed public testimony, closed the record
17 and scheduled its decision on January the 12th
18 on the year 2010. The Board requested no
19 additional information.

20 And to be brief again from the
21 staff, the Board is to act on the merits of
22 the request for the variance relief.

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1 CHAIRMAN LOUD: Thank you, Mr. Moy.

2 And again, I believe we are prepared to
3 deliberate this morning. I also did not
4 attend the hearing in the Poole case, but I
5 did review the transcript and the pleadings
6 and am prepared to participate in the
7 deliberation and vote this morning.

8 I think again Mr. Dettman who led
9 us off in El-Baroudy will also lead us off in
10 the Poole case.

11 VICE CHAIRMAN DETTMAN: Thank you,
12 Mr. Chair. As Mr. Moy stated, this is a
13 request for variance relief pursuant to
14 several sections of the Zoning Regulations or
15 variance relief from several sections of the
16 Zoning Regulations in order to construct a
17 second-story rear addition above an existing
18 one-story kitchen to an existing row dwelling
19 located at 1212 Wylie Street, N.E.

20 The subject property currently is
21 nonconforming as to minimum lot area under
22 401, minimum lot width 401, lot occupancy. It

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1 currently has a lot occupancy of 77 percent,
2 that's section 403. And as well as rear yard
3 and open court. And these nonconformities
4 currently exist on the property.

5 And I guess technically, the
6 proposed second-story addition will not
7 increase or extend any of these existing
8 nonconformities. It's not going to change the
9 lot dimensions. It doesn't change the lot
10 occupancy as there is already a one-story
11 portion of the house that occupies that
12 portion of the property.

13 The second-story is actually going
14 to match the footprint of the one-story
15 addition, so with respect to rear yard, it's
16 going to remain at 9.5 feet where 20 feet is
17 required.

18 And finally, with respect to the
19 requirement for open court, currently there is
20 a 3.75 foot nonconforming open court. The
21 requirement under 406 is that a property must
22 provide 4 inches of court width for every foot

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1 of building height, but not less than 6 feet.

2 So currently the minimum
3 requirement is 6 feet, based on the height of
4 the property. And after the proposed
5 construction, the minimum requirement would
6 still be 6 feet.

7 The Office of Planning, we have
8 their report, our Exhibit No. 23. OP
9 indicates that they cannot support the
10 variance relief, mainly because they believe
11 it fails on the first prong.

12 They indicate that many of the
13 properties within the surrounding neighborhood
14 are of a similar size or smaller. And in that
15 respect, the size of the property is not a
16 unique condition and, therefore, if there is
17 no uniqueness, they need not move on to
18 determining whether or not there is a
19 practical difficulty.

20 I believe the Office of Planning
21 does indicate that with respect to the third
22 prong that it does not appear that the

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1 addition, as proposed, would unduly impact the
2 neighboring properties. However, approval of
3 multiple variances would weaken the intent of
4 the current regulations. And again, that's
5 our Exhibit No. 23.

6 When I look at this case, I see it
7 a little bit differently than the Office of
8 Planning. During the testimony, the applicant
9 indicated that they purchased the property, I
10 believe, in June and that it was not livable
11 at the time of purchase. It was in
12 significant disrepair. There were no
13 appliances.

14 And we also spent some time
15 discussing what needed to be done to the
16 property in order to bring it up to current
17 code, current building codes. And we focused
18 a little bit on the stairway. The stairway
19 that existed at the time of purchase did not
20 meet the code. It was too narrow and too
21 steep and it required the applicant to
22 reconfigure the stair, which, essentially,

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1 resulted in the applicant losing a little bit
2 of livable square footage in the upstairs. I
3 think mainly in the hall and to one bedroom.

4 It was a small amount of square
5 footage. The applicant said that it was about
6 20 square feet, again, in the hall and one
7 bedroom.

8 And just to note that the applicant
9 is pursuing this request in order for them to
10 reside in the city. And I think they were
11 contemplating starting a family and raising a
12 child in this house, so they needed a little
13 bit of extra square footage.

14 I think that the condition of the
15 property when they purchased it, that it was
16 not livable, I think that the requirement to
17 reconfigure the staircase in order to meet
18 code requirement and the resulting loss of a
19 small amount of square footage, I think that
20 that, to me, is exceptional enough in
21 combination with the fact that these
22 nonconformities exist not by an action of the

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1 applicant or by any kind of subsequent
2 addition to the original house.

3 All of these nonconformities were
4 basically put in place by way of adoption of
5 the Zoning Regulations. And while something
6 being nonconforming simply by the adoption of
7 the Zoning Regulations does not in and of
8 itself, I think, meet the first prong, I think
9 that subsequently the Zoning Regulations have
10 been amended.

11 2001.3 allows additions to
12 nonconforming properties as long as it meets
13 the lot occupancy. The adoption of the Zoning
14 Regulations rendered this thing nonconforming.

15 Subsequently, the Zoning Commission
16 said well, we are going to make it a little
17 bit easier for home owners to put additions on
18 without having to seek the higher standard
19 variance. And they put in place 223.

20 This property can't come in under
21 223. Again, not because of some subsequent
22 action by a property owner, but because the

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1 Zoning Regulations, when they were adopted in
2 1958, rendered this thing nonconforming,
3 particularly with respect to lot occupancy.

4 So all of these provisions that
5 exist in order to allow homeowners to
6 reasonable expand their property have never
7 been available to this particular property,
8 because the Zoning Regulations rendered
9 several of the area requirements on this
10 property nonconforming.

11 So I think collectively, to me, I
12 think the first prong is met. And the
13 exceptional conditions on this property make
14 it practically difficult for the property
15 owner to carry out their addition and be able
16 to remain in the city and raise their family
17 and meet the Zoning Regulations.

18 And then with respect to the third
19 prong, I think I agree with the Office of
20 Planning. I don't see where it would have any
21 undue impact to neighboring properties. In
22 fact, the ANC as well as the neighboring

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1 property owners as well as the Capitol Hill
2 Restoration Society weighed in in support to
3 the application.

4 And I don't think that it actually
5 weakens the intent of the current Zoning
6 Regulations. So I don't see any kind of
7 substantial detriment to the purpose and
8 intent of the Zoning Regulations.

9 So that being said, Mr. Chairman,
10 again, I'm in support of the application.

11 MEMBER MOLDENHAUER: I think that
12 this was more of a difficult case, because I
13 think that there was not a clear satisfaction
14 of the first prong. But I think after
15 reviewing it and after hearing Mr. Dettman's
16 analysis, I think that I see it more as a
17 combination of two elements and a balancing
18 of, one, the satisfaction of the first prong
19 by the condition of the property and the need
20 to make different changes to the staircase due
21 to the narrowness and the steepness of the
22 staircase.

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1 The loss of that square footage,
2 the size of the property while potentially may
3 be similar to other lots when looking at a
4 greater perspective, based on the general
5 requirements of the Zoning Regs is a smaller
6 or more of an exceptional size lot.

7 And I think that, most importantly,
8 in conjunction with or in comparison to the
9 amount of relief that is being sought allows
10 this case to satisfy the requirements for the
11 variance test.

12 And I think that they are looking
13 for very minimal set of relief. And in
14 comparison then to the, I guess, strength of
15 that first prong, I think, that's where my
16 balance and my analysis allows me to agree
17 with Mr. Dettman that this case does satisfy
18 the variance requirements and to approve it.

19 CHAIRMAN LOUD: Thank you both.
20 I'll be brief as well. I support Mr.
21 Dettman's direction and Mrs. Moldenhauer's
22 support of that.

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1 I do it because I see a confluence
2 of factors and that's the only reason, I
3 think, any one of the factors in isolation I
4 would not support. But there is such a
5 bizarre convergence of factors on this one
6 lot, including the fact that it is a small
7 lot, apparently 59 percent of the lots in the
8 square are larger, added to the fact Mr.
9 Dettman mentioned the need for repairs to
10 bring the interior stairs into compliance.

11 Apparently the stairs were in
12 reverse order when you first walked in the
13 house. You saw the back of the stairs and
14 they were steep and they were not code
15 compliant, which is pretty bizarre to see the
16 back of the stairs.

17 Then as Mr. Dettman mentioned, none
18 of the existing nonconformities except one
19 would be extended at all. Only the open court
20 nonconformity would require any kind of real
21 variance relief, should we vote to approve it,
22 and that's very minimal relief.

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1 And so again, all of these things
2 sort of added to one another create a bizarre
3 kind of situation where they tip the scale, in
4 my mind, in favor of the applicant.

5 I think a similarly situated
6 applicant in the same neighborhood that didn't
7 have this bizarre convergence of all of these
8 things meeting each other might have a more
9 difficult time getting a variance through.
10 But I think in this case there are enough
11 bizarre convergences for a confluence of
12 factors test to be met.

13 In addition to which, as Mr.
14 Dettman mentioned, the ANC supports, Capitol
15 Hill Restoration Society supports, the
16 neighbors support and even the Office of
17 Planning does not see any public detriment
18 from grant of this variance request.
19 Although, they did see some harm to the Zone
20 Plan.

21 So for all of those reasons, as
22 well as what Mr. Dettman has mentioned and

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1 Mrs. Moldenhauer has mentioned, I too support
2 it.

3 Are we ready for a motion?

4 VICE CHAIRMAN DETTMAN: Certainly,
5 Mr. Chairman. I think that just to reiterate
6 Ms. Moldenhauer's point about the degree of
7 the relief that is being sought, I think that
8 is a very important point to make. This was a
9 very close call for me and I think Ms.
10 Moldenhauer kind of indicated the same.

11 But again, it was the degree of the
12 relief and the extent of the practical
13 difficulty to me seemed, in terms of their
14 magnitude, kind of similar. And so I think
15 that with respect to the variance test, the
16 level of exceptionality on this property, the
17 degree of the relief and the extent of the
18 practical difficulty, I think the test is
19 made.

20 And so that being said, I would
21 move for approval of Application No. 18010,
22 pursuant to 11 DCMR 3103.2, for a variance

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1 from the rear yard requirements, court
2 requirements, nonconforming structure
3 provisions and the minimum lot dimensions, to
4 allow a second-story addition to an existing
5 one-family row dwelling in the R-4 District
6 located at 1212 Wylie Street, N.E.

7 CHAIRMAN LOUD: Motion seconded.
8 The motion has been made and seconded. Is
9 there further deliberation?

10 Hearing none, all those in favor
11 say aye.

12 ALL: Aye.

13 CHAIRMAN LOUD: All those who
14 oppose? And are there any absentees?

15 MR. MOY: Yes, sir, Mr. Chairman.
16 Again, we have the Chair from the Zoning
17 Commission, Mr. Anthony Hood, also
18 participating and his absentee ballot is to
19 approve with such conditions as the Board may
20 impose.

21 So that would give a final vote of
22 4-0-1 on the motion of the Vice Chair, Mr.

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1 Dettman, to approve the application, seconded
2 by the Chair, Mr. Loud, also in support Ms.
3 Moldenhauer and again Mr. Hood. The final
4 vote is 4-0-1. No other Board Member
5 participating.

6 CHAIRMAN LOUD: Thank you, Mr. Moy.

7 I want to congratulate the applicant, Poole,
8 commend the Office of Planning for another
9 fine job in its report and thank my colleagues
10 as well.

11 I think with that we can adjourn.

12 I'm sorry?

13 MR. MOY: Would the Board care to
14 waive their requirements for a summary order?

15 CHAIRMAN LOUD: Yes, yes, sir.

16 MR. MOY: Very good.

17 CHAIRMAN LOUD: Thank you, Mr. Moy.

18 And with that, I think we can
19 adjourn the morning decision calendar.

20 (Whereupon, the Public Decision
21 Meeting was concluded at 10:28 a.m.)
22

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